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Father's Day, 2016

By the President of the United States of America

A Proclamation

Blessed with the extraordinary privilege and remarkable responsibility of fatherhood, dads play vital roles in our lives—inspiring us to reach for our highest potential, lifting us up when we need it most, and helping us become the people we were meant to be. Doing right by our families is the most important job any of us will ever have. On Father's Day, we thank the wonderful fathers—and stepfathers, grandfathers, uncles, brothers, and mentors—in our lives, and we recognize the sacrifices they make to be there for us, through good times and bad.

Fathers provide the discipline, guidance, and love it takes to flourish. With persistence and patience, generosity and integrity, they build our cores and help us understand right from wrong. They are some of our earliest and strongest sources of support and encouragement, and they serve as role models and sounding boards in our youth and as we grow. From single fathers who struggle to make ends meet to surrogates who step up to be there for America's daughters and sons, these men help shoulder the greatest obligation that exists—raising the next generation. Regardless of sexual orientation, gender identity, or marital status; whether biological, foster, or adoptive; fathers teach their children the values that matter most and steer their moral compasses.

My Administration is dedicated to enacting policies that make it easier for working fathers to support their families, including paid family leave. We must promote responsible fatherhood by lifting up the fathers who do their part to be the parents and providers their children need and by rejecting any excuse for failing to meet this obligation. Too many Americans grow up without a father figure in their lives, and it is imperative that America's responsible men step up to be mentors for our young people in need of guidance. To learn more, visit www.Fatherhood.gov or www.Mentor.gov.

Being a father is about more than just having children—it is about summoning the courage to love and support them over anything else. We must always strive to be the best parents and role models we can be and commit to being present in the lives of our kids. Nothing is more precious than the moments we get to spend with our families—in conversations at the dinner table, coaching tips shouted from the sidelines, or profound experiences of learning and growing and teaching. Today, let us express our gratitude for the men who have enriched our lives and shaped our characters, and let us never stop working to show them how much they are valued and loved.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972, as amended (36 U.S.C. 109), do hereby proclaim June 19, 2016, as Father's Day. I direct the appropriate officials of the Government to display the flag of the United States on all Government buildings on this day, and I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

[FR Doc. 2016–14868
Filed 6–21–16; 8:45 am]
Billing code 3295–F6–P

Presidential Determination No. 2016–08 of June 10, 2016

Proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Kingdom of Norway Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Kingdom of Norway Concerning Peaceful Uses of Nuclear Energy (the "Agreement"), along with the views, recommendations, and statements of the interested departments and agencies.

I have determined that the performance of the proposed Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize the Secretary of State to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register*.

THE WHITE HOUSE,
Washington, June 10, 2016

[FR Doc. 2016–14884
Filed 6–21–16; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register

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Wednesday, June 22, 2016

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–16–0002]

RIN 0563–AC50

Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Basic Provisions. The intended effect of this action is to provide policy changes and to clarify existing policy provisions to better meet the needs of policyholders. Issues have arisen regarding: The qualifications for double cropping; and when it is practical to replant. This rule addresses those issues.

DATES: *Effective date:* This final rule is effective June 22, 2016.

Applicability date: The changes are applicable for the 2017 and succeeding crop years for all crops with a contract change date on or after June 22, 2016, and for the 2018 and succeeding crop years for all crops with a contract change date prior to June 22, 2016.

Comment due date: FCIC will accept written comments on this final rule until close of business August 22, 2016. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: FCIC prefers interested persons submit their comments electronically through the Federal eRulemaking Portal. Interested persons may submit comments, identified by Docket ID No. FCIC–16–0002, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

FCIC will post all comments received, including those received by mail, without change to *http://www.regulations.gov,* including any personal information provided. Once these comments are posted to this Web site, the public can access all comments at its convenience from this Web site. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If interested persons are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, FCIC requests that the document attachment be in a text-based format. If interested persons want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of the submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the Risk Management Agency (RMA) Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an entity, such as an association, business, labor union, etc.). Interested persons may review the complete User Notice and Privacy Notice for *Regulations.gov* at *http://www.regulations.gov/#!privacyNotice.*

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

FCIC amends the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.8 Common Crop Insurance Regulations, Basic Provisions. The changes to the policy made in this rule are applicable for the 2017 and succeeding crop years for all crops with a contract change date on or after June 22, 2016, and for the 2018 and succeeding crop years for all crops with a contract change date prior to June 22, 2016.

FCIC is issuing this final rule without opportunity for prior notice and comment. The Administrative Procedure Act exempts rules "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts" from the statutory requirement for prior notice and opportunity for public comment (5 U.S.C. 553(a)(2)). However, FCIC is providing a 60-day comment period and invites interested persons to participate in this rulemaking by submitting written comments. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

The changes to the Common Crop Insurance Regulations, Basic Provisions (7 CFR part 457) are as follows:

(a) Section 1—FCIC is revising the definition of "practical to replant." Concerns have been raised regarding the definition of "practical to replant" and the difficulty and inconsistency that can occur in administering the practical to replant provisions of the crop insurance policy. Approved insurance providers have stated the provisions, as written, regarding "practical to replant" lead to different approved insurance providers reaching differing determinations as to whether it is practical to replant in the same area. FCIC is revising the definition to provide a clear, known deadline for when replanting of the crop is considered to be practical and if not replanted, coverage will not be provided for the initial crop. The definition provides an exception for adverse weather conditions that would either prohibit the physical replanting of the crop, or impact seed germination, emergence, and formation of a healthy plant.

(b) Section 15—FCIC is revising section 15 to allow the allocation of comingled first and second crop production to the associated crop acreage in proportion to the liability for the acreage that was and was not double cropped. Some producers have found challenges keeping separate records of acreage and production that was and was not double cropped because often times the acreage is in the very same field and they harvest both first and second crop production at the same time. For example, if a producer has two fields in the same unit, or one field half of which was first crop acreage and half that was double crop acreage, next to each other and on one field they plant wheat, harvest the wheat, and plant soybeans while the other field was a single crop of soybeans only, they may harvest both soybean fields at the same time making it difficult to keep the production separate. This change has previously been implemented administratively through MGR–11–003.

FCIC is also revising section 15 to allow eligible double cropping acres to be based on either, (1) the greatest number of acres double cropped in two of the last four crop years in which the first insured crop was planted; or (2) the percentage of acres historically double cropped in two of the last four crop years in which the first insured crop was planted. Current double cropping requirements do not adequately recognize changes in growing farm operations or for added land. This change will address both land added to an operation, and account for multiple crop rotations. For example, if a producer has a 100-acre farm and has historically double cropped 50 acres planted to wheat followed by soybeans (50 percent of acres historically double cropped), and the producer purchases and plants an additional 200 acres of wheat for a total of 300 acres of planted wheat, the number of acres eligible for double cropping would be based on 50 percent, or 150 acres. If the producer has historically double cropped wheat followed by soybeans on some or even all of the acreage, there is a reasonable presumption they may continue to do so in the future.

Previously, changes made to the Federal crop insurance policies codified in the Code of Federal Regulations were required to be implemented through the rulemaking process. Such action was not required by the Administrative Procedures Act because contracts were exempt from notice and comment rulemaking and the crop insurance policy is a contract. However, a prior Secretary of Agriculture published a notice in the **Federal Register** stating that the Department of Agriculture would, to the maximum extent practicable, use the notice and comment rulemaking process when making program changes, including those involving contracts. FCIC has complied with this notice over the subsequent years. Recently, the current Secretary of Agriculture has published a notice in the **Federal Register** rescinding the prior notice, thereby making contracts again exempt from the notice and comment rulemaking process. This exemption applies to the 30 day notice prior to implementation of a rule. Therefore, the policy changes made by this final rule are effective upon publication in the **Federal Register**.

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Federal Crop Insurance Corporation has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, the Federal Crop Insurance Corporation will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the indemnity amount for an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (FCIA) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See 2 CFR part 415, subpart C.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

■ 2. Amend § 457.8, in the Common Crop Insurance Policy, as follows:

■ a. In section 1 by revising the definition of "practical to replant;" and

■ b. In section 15 by revising paragraphs (h) and (i).

The revisions and additions reads as follows:

§ 457.8 The application and policy.

* * * * *

Common Crop Insurance Policy

* * * * *

1. Definitions.

* * * * *

Practical to replant. Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow it to attain maturity prior to the calendar date for the end of the insurance period. It will be considered practical to replant within or prior to the late planting period, or on or prior to the final planting date if no late planting period is applicable, unless we determine it is physically impossible to replant the acreage or there is no chance of seed germination, emergence, and formation of a healthy plant.

* * * * *

15. Production Included in Determining an Indemnity and Payment Reductions.

* * * * *

(h) You may receive a full indemnity, or a full prevented planting payment for a first insured crop when a second crop is planted on the same acreage in the same crop year, if each of the following conditions are met, regardless of whether or not the second crop is insured or sustains an insurable loss:

(1) Planting two or more crops for harvest in the same crop year in the area is generally recognized by agricultural experts or organic agricultural experts;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped;

(4) In the case of prevented planting, the second crop is not planted on or prior to the final planting date or, if applicable, prior to the end of the late planting period for the first insured crop;

(5) You provide records, acceptable to us, of acreage and production specific to the double cropped acreage proving that:

(i) You have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted; if you acquired additional acreage, you may apply the percentage of acres that you have previously double cropped to the total acreage now in your operation using the following calculation:

(A) Determine the number of acres of the first insured crop that were double cropped in each of the years for which records are provided (For example, records are provided showing: 100 acres of wheat planted in 2015 and 50 of those acres were double cropped with soybeans; and 100 acres of wheat planted in 2016 and 70 of those acres were double cropped with soybeans);

(B) Divide each result of section 15(h)(5)(i)(A) by the number of acres of the first insured crop that were planted in each respective year (In the example above, 50 divided by 100 equals 50 percent of the first insured crop acres were double cropped in 2015 and 70 divided by 100 equals 70 percent were double cropped in 2016);

(C) Add the results of section 15(h)(5)(i)(B) and divide by the number of years the first insured crop was double cropped (In the example above, 50 plus 70 equals 120 divided by 2 equals 60 percent); and

(D) Multiply the result of 15(h)(5)(i)(C) by the number of insured acres of the first insured crop (In the example above, 60 percent of the wheat acres insured in 2017 and 60 percent of the second crop acres insured in 2017 are eligible for double cropping history);

or

(ii) The applicable acreage was double cropped (by one or more other producers, and the producer(s) will allow you to use their records) for at least two of the last four crop years in which the first insured crop was grown on it; and

(6) If you do not have records of acreage and production specific to the double cropped acreage, as required in section 15(h)(5), but instead have records that combine production from acreage you double cropped with records of production you did not double crop, we will allocate the first and second crop production to the specific acreage in proportion to the liability for the acreage that was and was not double cropped.

(i) If you provided acceptable records in accordance with section 15(h), your double cropping history is based on the acres historically cropped:

(1) If the records you provided are from acreage you double cropped in at least two of the last four crop years, you may apply your history of double cropping to any acreage of the insured crop in the county (*e.g.,* if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres

in the county as long as it does not exceed 100 acres); or

(2) If the records you provided are from acreage that one or more other producers double cropped in at least two of the last four crop years, you may only use the history of double cropping for the same physical acres from which double cropping records were provided (*e.g.*, if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped).

* * * * *

Signed in Washington, DC, on June 16, 2016.

Brandon Willis,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2016–14735 Filed 6–21–16; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–6542; Directorate Identifier 2015–NM–038–AD; Amendment 39–18563; AD 2016–12–14]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Embraer S.A. Model ERJ 170 airplanes; and all Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. This AD was prompted by reports of cracks in certain engine low-stage bleed check valves. This AD requires replacing the air management system (AMS) controller operation program of the AMS controller processor boards, and replacing the current low-stage bleed check valve and associated seals. We are issuing this AD to prevent failure of the low-stage bleed check valve; simultaneous failures of both low-stage bleed check valves could result in a dual engine in-flight shutdown.

DATES: This AD is effective July 27, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 27, 2016.

ADDRESSES: For service information identified in this final rule, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227-901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6542.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6542; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ana Martinez Hueto, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1622; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Embraer S.A. Model ERJ 170 airplanes; and all Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. The NPRM published in the **Federal Register** on November 30, 2015 (80 FR 74720) ("the NPRM").

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2015–02–02, effective March 6, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Embraer S.A. Model ERJ 170 airplanes; and all Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. The MCAI states:

> This [Brazilian] AD was prompted by reports of cracks in some engine low-stage bleed check valves having part number (P[/]N) 1001447–6. Further analysis has determined that if a new (zero hour) low-stage bleed check valve P/N 1001447–6 is installed in an airplane already equipped with the Air Management System (AMS) controller processor boards containing the AMS Controller Operational Program version Black Label 13, or a later version, premature cracking on the petals of the low-stage bleed check valve is not expected to occur. We are issuing this [Brazilian] AD to prevent the possibility of a dual engine in-flight shutdown due to low-stage bleed check valve failure.

The unsafe condition is failure of the low-stage bleed check valve; simultaneous failures of both low-stage bleed check valves could result in a dual engine in-flight shutdown. The required action is replacement of the AMS controller operation program of the AMS controller processor boards, and replacement of the low-stage bleed check valves and associated seals. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6542.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Authorize Operators To Install Used Overhauled Valves

An anonymous commenter requested that we revise the NPRM to authorize operators to install used valves that have been overhauled by the manufacturer or other authorized 14 CFR part 145 repair station. The commenter stated that the historical service records required to determine the serviceability of used valves installed on airplanes are not required by 14 CFR 91.417 and are generally not available. According to the commenter, this limits the ability of operators of Embraer Model ERJ 170 airplanes to adequately determine the service history of valves that were previously installed on Embraer Model ERJ 190 airplanes, and whether the installation of a used valve will meet compliance with the requirements of paragraph (j)(1) of the proposed AD.

We disagree to revise this AD to authorize operators to install used valves that have been overhauled. A valve that has been used on a Model ERJ 190 airplane without the AMS controller operational program version Black Label 13 or later version has been subjected to hydraulic pressures above the valve's structural limits. The damage to the valve could be undetectable, and the valve can therefore experience premature cracking. However, as is stated in paragraph (i) of this AD, low-stage bleed check valves having P/N 1001447–6 that can be demonstrated with logged hours only on Model ERJ–170 airplanes and/or on Model ERJ–190 airplanes equipped with the AMS controller operational program version Black Label 13, or a later version, can be used instead of new ones (zero-hour). We have made no changes to this AD in this regard.

Request To Revise Wording of the Unsafe Condition

Embraer requested that we revise the unsafe condition in the NPRM to indicate that a single valve failure cannot result in a dual engine failure. Embraer stated that a dual engine failure can occur only in the event of simultaneous failures of both valves on both engines on the same flight.

For the reasons stated by Embraer, we agree to include the requested phrasing in all appropriate locations in this final rule.

Request To Revise the Applicability

United Technologies Aerospace Systems (UTAS) requested that we revise the applicability of the NPRM to include Model ERJ "195 airplanes" and limit the applicability for Model ERJ 170 airplanes (including Model ERJ "175 airplanes") to those "requiring replacement check valves."

We disagree to revise the applicability of this AD. There is a difference between the commercial designation and the model designation on the type certificate data sheet (TCDS): "ERJ 175" is the commercial designation of Model ERJ 170–200 airplanes on the TCDS, and "ERJ 195" is the commercial designation of Model ERJ 190–200 airplanes on the TCDS. We use the model designation on the TCDS to define the applicability of ADs.

Although this AD is applicable to Model ERJ 190 and Model ERJ 170 airplanes, the only requirement for Model ERJ 170 airplanes is included in paragraph (j)(1) of this AD, which is related to installation of used low-stage bleed check valves having P/N 1001447–6 on Model ERJ 170 airplanes. As noted in the NPRM, ANAC is considering future rulemaking to include a similar requirement. We have made no changes to this AD in this regard.

Request To Clarify the Reason for the NPRM

UTAS requested that we revise paragraph (e), "Reason," of the proposed AD to specify that cracks were found only on check valve P/N 1001447–6 on Model ERJ 190 airplanes.

Although we agree that cracks may have been found only on check valve P/N 1001447–6 on Model ERJ 190 airplanes, we disagree to revise paragraph (e), "Reason," of this AD. The unsafe condition of this AD is not limited to Model ERJ 190 airplanes since the check valves may also be installed on Model ERJ 170 airplanes. We have made no changes to this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

Embraer has issued Service Bulletin 190–36–0023, Revision 03, dated September 24, 2014; and Service Bulletin 190–21–0041, Revision 02, dated July 30, 2013. The service information describes procedures for replacing the engine low-stage bleed check valves. Embraer Service Bulletin 190–21–0041, Revision 02, dated July 30, 2013, also describes procedures for replacing the AMS controller operation program of the AMS controller processor boards. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 197 airplanes of U.S. registry.

We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $638 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $192,666, or $978 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–12–14 Embraer S.A.: Amendment 39–18563. Docket No. FAA–2015–6542; Directorate Identifier 2015–NM–038–AD.

(a) Effective Date

This AD is effective July 27, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) All Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes.

(2) All Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Reason

This AD was prompted by reports of cracks in certain engine low-stage bleed check valves. We are issuing this AD to prevent failure of the low-stage bleed check valve; simultaneous failures of both low-stage bleed check valves could result in a dual engine in-flight shutdown.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Modification

For Embraer S.A. Model ERJ 190 airplanes identified in Embraer Service Bulletin 190–21–0041, Revision 02, dated July 30, 2013: Within 3 months after the effective date of this AD, replace the Hamilton Sundstrand air management system (AMS) controller operation program of the AMS controller processor boards, as specified in paragraph (g)(1) or (g)(2) of this AD.

(1) Replace with a new, improved program, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 190–21–0041, Revision 02, dated July 30, 2013.

(2) Replace with a version of the Hamilton Sundstrand AMS controller operation program approved after August 31, 2012, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; Agência Nacional de Aviação Civil (ANAC); or ANAC's authorized Designee.

(h) Valve Replacement

For Embraer S.A. Model ERJ 190 airplanes identified in Embraer Service Bulletin 190–21–0041, Revision 02, dated July 30, 2013: Within 3 months after the effective date of this AD, and after accomplishment of the actions required by paragraph (g) of this AD, replace the check valve and associated seals of the left-hand and right-hand engine bleed system with a check valve identified in paragraph (i) of this AD, and new seals, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 190–36–0023, Revision 03, dated September 24, 2014.

(i) Allowed Valves

When complying with paragraph (h) of this AD, the low-stage bleed check valves having P/N 1001447–6, and associated seals, are replaced with new ones (zero-hour). Low-stage bleed check valves having P/N 1001447–6 that can be demonstrated with logged hours only on Model ERJ 170 airplanes and/or on Model ERJ 190 airplanes equipped with the AMS controller operational program version Black Label 13, or a later version, can be used instead of new ones (zero-hour).

(j) Parts Installation Limitation

(1) For Model ERJ 170–100 STD, –100 LR, –100SU, –100SE, –200 STD, –200 LR, and –200 SU airplanes: No person may install on any airplane a low-stage bleed check valve having P/N 1001447–6 that was installed on any Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, or –200 IGW airplane, any serial number except 190–00587, 190–00589, and 190–00593 and subsequent, prior to accomplishment of the requirements of paragraph (g) of this AD.

(2) For Model ERJ 190–100 STD, –100 LR, –100IGW, –200 STD, –200 LR, and –200 IGW airplanes: No person may install on any airplane on which the actions of paragraph (g) of this AD have been done, a low-stage bleed check valve having P/N 1001447–6 that was previously installed on any Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, or –200 IGW airplane, any serial number except 190–00587, 190–00589, 190–00593 and subsequent, prior to accomplishment of the requirements of paragraph (g) of this AD.

(k) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraph (k)(1)(i) or (k)(1)(ii) of this AD. This service information is not incorporated by reference in this AD.

(i) Embraer Service Bulletin 190–21–0041, dated September 27, 2012.

(ii) Embraer Service Bulletin 190–21–0041, Revision 01, dated December 20, 2012.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraph (k)(2)(i), (k)(2)(ii), or (k)(2)(iii) of this AD. This service information is not incorporated by reference in this AD.

(i) Embraer Service Bulletin 190–36–0023, dated July 22, 2013.

(ii) Embraer Service Bulletin 190–36–0023, Revision 01, dated September 3, 2013.

(iii) Embraer Service Bulletin 190–36–0023, Revision 02, dated April 30, 2014.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Ana Martinez Hueto, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1622; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian Airworthiness Directive 2015–02–02, effective March 6, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6542.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Embraer Service Bulletin 190–21–0041, Revision 02, dated July 30, 2013.

(ii) Embraer Service Bulletin 190–36–0023, Revision 03, dated September 24, 2014.

(3) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55

12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14305 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–2042; Directorate Identifier 2016–NE–02–AD; Amendment 39–18568; AD 2016–13–04]

RIN 2120–AA64

Airworthiness Directives; BRP-Powertrain GmbH & Co KG Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain BRP-Powertrain GmbH & Co KG Rotax 912 F2, 912 F3, 912 F4, 912 S2, 912 S3, 912 S4, 914 F2, 914 F3, and 914 F4 reciprocating engines. This AD requires re-identification of the engine model and concurrent modification of the aircraft to indicate the maximum coolant temperature limit. This AD was prompted by a design change introduced by the manufacturer that relocated the engine cylinder head temperature sensor to a different location and converted it to a coolant temperature sensor. We are issuing this AD to prevent exceeding engine coolant temperature limits, which could result in loss of engine coolant, damage to the engine, and loss of control of the airplane.

DATES: This AD becomes effective July 27, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 27, 2016.

ADDRESSES: For service information identified in this final rule, contact BRP-Powertrain GmbH & Co KG, Rotaxstrasse 1, A–4623 Gunskirchen, Austria; phone: +43 7246 6010; fax: +43 7246 601 9130; email: *airworthiness@brp.com;* Internet: *http://www.FLYROTAX.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–2042.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–2042; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on March 18, 2016 (81 FR 14804). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> A design change of the engine cylinder heads was introduced by BRP-Powertrain in March 2013 which modifies the engine/aircraft interfaces by substituting the previous cylinder head temperature (CHT) measurement (limit temperature 135 °C/150 °C) with a coolant temperature (CT) measurement (limit temperature 120 °C).
>
> The design change was communicated on 15 May 2013 by BRP-Powertrain Service Instruction (SI) 912–020R7/914–022R7 (single document) but was not identified by a change of the engine model designation or of the engine P/N but only through the cylinder head P/N and the position of the temperature sensor.
>
> Consequently, engines with the new cylinder heads (installed during production or replaced in-service during maintenance) may be installed on an aircraft without concurrent modification of that aircraft, instructions for which should be provided by the type certificate (TC) holder or the supplemental type certificate (STC) holder, as applicable. In this case, the coolant temperature with a maximum engine operating limit of 120 °C (valid for engines operated with water diluted glycol coolant) is displayed on a CHT indicator with a typical limit marking (red radial/range) of more than 120 °C.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–2042.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 14804, March 18, 2016).

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed expect for minor editorial changes. We determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

BRP-Powertrain GmbH & Co KG has issued Service Bulletin (SB) SB–912–068/SB–914–049 (one document), dated April 16, 2015. The service information describes procedures for re-identification of the type plate for certain BRP-Powertrain GmbH & Co KG Rotax 912 and 914 engines. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects about 40 engines installed on aircraft of U.S. registry. We also estimate that it will take about 5 hours per engine to inspect and re-identify the type plate. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $17,000.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–13–04 BRP-Powertrain GmbH & Co KG (formerly BRP-Rotax GmbH & Co KG, Bombardier-Rotax GmbH & Co. KG, and Bombardier-Rotax GmbH): Amendment 39–18568; Docket No. FAA–2016–2042; Directorate Identifier 2016–NE–02–AD.

(a) Effective Date

This AD becomes effective July 27, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BRP-Powertrain GmbH & Co KG Rotax model 912 F2, 912 F3, 912 F4, 912 S2, 912 S3, 912 S4, 914 F2, 914 F3, and 914 F4 reciprocating engines with a cylinder head that has a part number (P/N) listed in Figure 1 to paragraph (c) of this AD and that is installed in position 2 or 3.

FIGURE 1 TO PARAGRAPH (c) OF THIS AD—POST-MODIFICATION CYLINDER HEAD P/N

Engine model	Cylinder head P/N
912 F2, 912 F3, 912 F4, 914 F2, 914 F3, and 914 F4.	P/N 413235 or P/N 413236.
912 S2, 912 S3, and 912 S4.	P/N 413185.

(d) Reason

This AD was prompted by a design change introduced by the manufacturer that relocated the engine cylinder head temperature sensor to a new location and converted it to a coolant temperature sensor. We are issuing this AD to prevent exceeding coolant temperature limits, which could result in loss of engine coolant, damage to the engine, and loss of control of the airplane.

(e) Actions and Compliance

Comply with this AD within 6 months after the effective date of this AD, unless already done.

(1) For engines with cylinder heads that have a P/N listed in Figure 1 to paragraph (c) of this AD installed on both position 2 and position 3, change the engine model designation on the engine type data plate to include a "–01" suffix. Use paragraph 3.1.1 of BRP-Powertrain Service Bulletin (SB) SB–912–068/SB–914–049, dated April 16, 2015, to make this change.

(2) For engines with only one cylinder head having a P/N listed in Figure 1 to paragraph (c) of this AD installed in position 2 or 3, do one of the following:

(i) Replace the cylinder head having a P/N listed in Figure 1 to paragraph (c) of this AD with a P/N 623682 cylinder head on Rotax 912 F2, 912 F3, 912 F4, 914 F2, 914 F3, and 914 F4 engines and with a P/N 623687 cylinder head on Rotax 912 S2, 912 S3, and 912 S4 engines. If you complete the actions in paragraph (e)(2)(i), no further action is required. Or,

(ii) Install cylinder heads identified in Figure 1 to paragraph (c) of this AD on both cylinder head positions 2 and 3 and change the engine model designation of the engine type data plate in accordance with paragraph (e)(1) of this AD.

(3) For engines re-identified in accordance with paragraph (e)(1) or (e)(2)(ii) of this AD, before further flight, modify the aircraft cockpit instrumentation and related documentation to indicate a maximum coolant temperature limit of 120 degrees Celsius using FAA-approved procedures. These re-identified engines remain eligible for installation on approved aircraft-engine combinations.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

(2) For more information about the installation modifications described in paragraph (e)(3) of this AD, contact Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust Ave. Room 301, Kansas City, MO; phone: 816–329–4165; fax: 816–329–4090; email: *Jim.Rutherford@faa.gov.*

(3) Refer to MCAI European Aviation Safety Agency, AD 2015–0240, dated December 18, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–2042.

(4) The following aircraft service information, which are not incorporated by reference in this AD, contain FAA-approved procedures for complying with paragraph (e)(3) of this AD and can be obtained from BRP-Powertrain GmbH & Co. KG, using the contact information in paragraph (h)(3) of this AD:

FIGURE 2 TO PARAGRAPH (g) OF THIS AD—AIRCRAFT TYPE/MODEL AND SERVICE INFORMATION

Type/model(s)	SB
Aquila AT01	SB–AT01–029.
TECNAM P92, P2002 and P2006T.	SB–183–CS.
TECNAM P2008 JC	SB–185–CS.
Diamond H 36 "Dimona" and HK 36 "Super Dimona".	OSB 36–111.
Diamond DV 20 "Katana"	OSB 20–066.
Diamond (Canada) DA20–A1 "Katana".	SB Da20–72–04.
M&D AVO 68 "Samburo"	TM 808–31.

FIGURE 2 TO PARAGRAPH (g) OF THIS AD—AIRCRAFT TYPE/MODEL AND SERVICE INFORMATION—Continued

Type/model(s)	SB
Scheibe SF 25 C and SF 36 R.	SI_02–14.

(h) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) BRP-Powertrain Service Bulletin SB–912–068/SB–914–049 (one document), dated April 16, 2015.

(ii) Reserved.

(3) For BRP-Powertrain service information identified in this AD, contact BRP-Powertrain GmbH & Co. KG, Rotaxstrasse 1, A–4623 Gunskirchen, Austria; phone: +43 7246 6010; fax: +43 7246 601 9130; email: *airworthiness@brp.com;* Internet: *www.flyrotax.com.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on June 14, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–14789 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4812; Directorate Identifier 2015–NM–034–AD; Amendment 39–18560; AD 2016–12–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 airplanes. This AD was prompted by a report that certain center and outboard stowage bin modules were incorrectly installed. This AD requires an inspection of the center and outboard stowage bin modules for missing parts, quick release pins that are not fully engaged, and parts that are installed in incorrect locations; and corrective actions if necessary. We are issuing this AD to detect and correct incorrectly installed center and outboard stowage bin modules that might not remain intact during an emergency landing, resulting in injuries to occupants and interference with airplane evacuation.

DATES: This AD is effective July 27, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 27, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4812.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4812; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6585; fax: 425–917–6590; email: *stanley.chen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 787–8 airplanes. The NPRM published in the **Federal Register** on November 17, 2015 (80 FR 71745), ("the NPRM"). The NPRM was prompted by a report that certain center and outboard stowage bin modules were incorrectly installed. The NPRM proposed to require an inspection of the center and outboard stowage bin modules for missing parts, quick release pins that are not fully engaged, and parts that are installed in incorrect locations; and corrective actions if necessary. We are issuing this AD to detect and correct incorrectly installed center and outboard stowage bin modules that might not remain intact during an emergency landing, resulting in injuries to occupants and interference with airplane evacuation.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM and the FAA's response to that comment.

Request To Include Additional Illustrations in Service Information

United Airlines stated that it would be helpful if the service information provided examples (illustrations or descriptions) of incorrectly installed parts that required removal. We infer that the commenter is requesting a revision to the service information to include examples of incorrectly installed parts.

We disagree with the commenter's request. We consider that it would be potentially confusing to show examples of possible incorrect part installations. We have determined that the service information should provide detailed illustrations of proper installation configurations. A general description of the incorrect installations is provided. We have not changed this final rule regarding this issue.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed the following Boeing service information. This service information describes procedures for inspecting the installation of the center and outboard stowage bin modules and doing corrective actions.

- Boeing Alert Service Bulletin B787–81205–SB250036–00, Issue 001, dated September 10, 2013.
- Boeing Alert Service Bulletin B787–81205–SB250039–00, Issue 001, dated October 8, 2013.
- Boeing Alert Service Bulletin B787–81205–SB250040–00, Issue 001, dated October 14, 2013.
- Boeing Alert Service Bulletin B787–81205–SB250041–00, Issue 001, dated October 18, 2013.
- Boeing Alert Service Bulletin B787–81205–SB250042–00, Issue 001, dated October 28, 2013.
- Boeing Alert Service Bulletin B787–81205–SB250043–00, Issue 001, dated November 4, 2013.
- Boeing Alert Service Bulletin B787–81205–SB250044–00, Issue 001, dated November 8, 2013.
- Boeing Alert Service Bulletin B787–81205–SB250045–00, Issue 001, dated November 15, 2013.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

We estimate that this AD affects 6 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	222 work-hours × $85 per hour = $18,870	$0	$18,870	$113,220

We estimate the following costs to do any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	20 work-hours × $85 per hour = $1,700	Up to $21,191	Up to $22,891.

According to the manufacturer, all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–12–11 The Boeing Company: Amendment 39–18560; Docket No. FAA–2015–4812; Directorate Identifier 2015–NM–034–AD.

(a) Effective Date

This AD is effective July 27, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to certain The Boeing Company Model 787–8 airplanes, certificated in any category, identified in the service information specified in paragraphs (c)(1) through (c)(8) of this AD.

(1) Boeing Alert Service Bulletin B787–81205–SB250036–00, Issue 001, dated September 10, 2013.

(2) Boeing Alert Service Bulletin B787–81205–SB250039–00, Issue 001, dated October 8, 2013.

(3) Boeing Alert Service Bulletin B787–81205–SB250040–00, Issue 001, dated October 14, 2013.

(4) Boeing Alert Service Bulletin B787–81205–SB250041–00, Issue 001, dated October 18, 2013.

(5) Boeing Alert Service Bulletin B787–81205–SB250042–00, Issue 001, dated October 28, 2013.

(6) Boeing Alert Service Bulletin B787–81205–SB250043–00, Issue 001, dated November 4, 2013.

(7) Boeing Alert Service Bulletin B787–81205–SB250044–00, Issue 001, dated November 8, 2013.

(8) Boeing Alert Service Bulletin B787–81205–SB250045–00, Issue 001, dated November 15, 2013.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report that certain center and outboard stowage bin modules were incorrectly installed. We are issuing this AD to detect and correct incorrectly installed center and outboard stowage bin modules that might not remain intact during an emergency landing, resulting in injuries to occupants and interference with airplane evacuation.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Corrective Action

Except as specified in paragraph (h) of this AD, at the applicable time specified in paragraph 5., "Compliance," of the applicable service information specified in paragraphs (g)(1) through (g)(8) of this AD: Do a general visual inspection of the installations of the center and outboard stowage bin modules to determine if any part is missing, if any part is installed at an incorrect location, or if any quick release pin is not fully engaged; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1) through (g)(8) of this AD. Do all applicable corrective actions before further flight.

(1) For airplanes having variable numbers (V/Ns) ZA177 through ZA183 inclusive: Use Boeing Alert Service Bulletin B787–81205–SB250036–00, Issue 001, dated September 10, 2013.

(2) For airplanes having V/Ns ZA100 through ZA105 inclusive, V/Ns ZA116 through ZA119 inclusive, V/N ZA135, and V/Ns ZA506 through ZA511 inclusive: Use Boeing Alert Service Bulletin B787–81205–SB250039–00, Issue 001, dated October 8, 2013.

(3) For airplanes having V/Ns ZA460 through ZA464 inclusive: Use Boeing Alert Service Bulletin B787–81205–SB250040–00, Issue 001, dated October 14, 2013.

(4) For airplanes having V/N ZA233 and V/Ns ZA236 through ZA240 inclusive: Use Boeing Alert Service Bulletin B787–81205–SB250041–00, Issue 001, dated October 18, 2013.

(5) For airplanes having V/Ns ZA285 through ZA290 inclusive: Use Boeing Alert Service Bulletin B787–81205–SB250042–00, Issue 001, dated October 28, 2013.

(6) For airplanes having V/Ns ZA270 through ZA271 inclusive: Use Boeing Alert Service Bulletin B787–81205–SB250043–00, Issue 001, dated November 4, 2013.

(7) For airplanes having V/Ns ZA261 through ZA264 inclusive: Use Boeing Alert Service Bulletin B787–81205–SB250044–00, Issue 001, dated November 8, 2013.

(8) For airplanes having V/Ns ZA536 through ZA538 inclusive: Use Boeing Alert Service Bulletin B787–81205–SB250045–00, Issue 001, dated November 15, 2013.

(h) Exceptions to Service Information Specifications

Where the service information identified in paragraphs (g)(1) through (g)(8) of this AD specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6585; fax: 425–917–6590; email: *stanley.chen@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin B787–81205–SB250036–00, Issue 001, dated September 10, 2013.

(ii) Boeing Alert Service Bulletin B787–81205–SB250039–00, Issue 001, dated October 8, 2013.

(iii) Boeing Alert Service Bulletin B787–81205–SB250040–00, Issue 001, dated October 14, 2013.

(iv) Boeing Alert Service Bulletin B787–81205–SB250041–00, Issue 001, dated October 18, 2013.

(v) Boeing Alert Service Bulletin B787–81205–SB250042–00, Issue 001, dated October 28, 2013.

(vi) Boeing Alert Service Bulletin B787–81205–SB250043–00, Issue 001, dated November 4, 2013.

(vii) Boeing Alert Service Bulletin B787–81205–SB250044–00, Issue 001, dated November 8, 2013.

(viii) Boeing Alert Service Bulletin B787–81205–SB250045–00, Issue 001, dated November 15, 2013.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425 227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 3, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14198 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7266; Directorate Identifier 2016–NM–085–AD; Amendment 39–18566; AD 2016–13–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–09–04 for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. AD 2016–09–04 required replacement of incorrectly calibrated angle of attack (AOA) transducers. This new AD requires the same actions as AD 2016–09–04. This new AD was prompted by a report of a typographical error in the regulatory text of AD 2016–09–04. We are issuing this AD detect and replace incorrectly calibrated AOA transducers; incorrect calibration of the transducers could result in late activation of the stick pusher.

DATES: This AD is effective July 7, 2016.

The Director of the **Federal Register** approved the incorporation by reference of a certain publication listed in this AD as of June 6, 2016 (81 FR 26102, May 2, 2016).

We must receive comments on this AD by August 8, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax: 514–855–7401; email: *ac.yul@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7266.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7266; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

On April 20, 2016, we issued AD 2016–09–04, Amendment 39–18502 (81 FR 26102, May 2, 2016) (“AD 2016–09–04”), for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. AD 2016–09–04 was prompted by the discovery of a number of incorrectly calibrated AOA transducers installed in the stall protection system. AD 2016–09–04 required replacement of incorrectly calibrated AOA transducers. We issued AD 2016–09–04 to detect and replace incorrectly calibrated AOA transducers; incorrect calibration of the transducers could result in late activation of the stick pusher.

Since we issued AD 2016–09–04, we received a report of a typographical error in the regulatory text of AD 2016–09–04. Paragraph (h) of AD 2016–09–04 inadvertently stated, “having a part number or serial number.” This should have stated “having a part number and serial number.” We have revised paragraph (h) of this AD accordingly.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2015–17, dated July 16, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The MCAI states:

> It was discovered that a number of AOA transducers installed on Bombardier CL–600–2B19 aeroplanes were incorrectly calibrated due to a quality control problem at both the production and repair facilities. Incorrect calibration of the AOA transducer could result in a late activation of the stick pusher.
>
> This [Canadian] AD mandates the replacement of the incorrectly calibrated AOA transducer.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7266.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 601R–27–164, dated March 30, 2015. The service information describes procedures for replacement of incorrectly calibrated AOA transducers with correctly calibrated AOA transducers. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA’s Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA’s Justification and Determination of the Effective Date

We are superseding AD 2016–09–04 to correct a typographical error in the regulatory text. No other changes have been made to AD 2016–09–04. Therefore, we determined that notice and opportunity for public comment are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7266; Directorate Identifier 2016–NM–085–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 575 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $10,000 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $5,945,500, or $10,340 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2016–09–04, Amendment 39–18502 (81 FR 26102, May 2, 2016), and adding the following new AD:

2016–13–02 Bombardier, Inc.: Amendment 39–18566. Docket No. FAA–2016–7266; Directorate Identifier 2016–NM–085–AD.

(a) Effective Date

This AD is effective July 7, 2016.

(b) Affected ADs

This AD replaces AD 2016–09–04, Amendment 39–18502 (81 FR 26102, May 2, 2016) ("AD 2016–09–04").

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 7067 inclusive, 7069 through 7990 inclusive, and 8000 through 8999 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by the discovery of a number of incorrectly calibrated angle of attack (AOA) transducers installed in the stall protection system. We are issuing this AD to detect and replace incorrectly calibrated AOA transducers; incorrect calibration of the transducers could result in late activation of the stick pusher.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Replacement of AOA Transducers With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2016–09–04, with no changes. For AOA transducers identified in paragraph 1.A., "Effectivity," of Bombardier Service Bulletin 601R–27–164, dated March 30, 2015: Within 2,500 flight hours or 12 months, whichever occurs first after June 6, 2016 (the effective date of AD 2016–09–04), replace the AOA transducers with correctly calibrated AOA transducers, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–164, dated March 30, 2015.

(h) Retained Parts Installation Prohibition, With a Change to the Affected Parts Language

This paragraph restates the parts installation prohibition specified in paragraph (h) of AD 2016–09–04, with a change to the affected parts language. As of June 6, 2016 (the effective date of AD 2016–09–04), no person may install, on any airplane, an AOA transducer having a part number and serial number listed in paragraph 1.A., "Effectivity," of Bombardier Service Bulletin 601R–27–164, dated March 30, 2015.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2015–17, dated July 16, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7266.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on June 6, 2016, (81 FR 26102, May 2, 2016).

(i) Bombardier Service Bulletin 601R–27–164, dated March 30, 2015.

(ii) Reserved.

(4) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax: 514–855–7401; email: *ac.yul@aero.bombardier.com;* Internet: *http://www.bombardier.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 13, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14578 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7265; Directorate Identifier 2016–NM–084–AD; Amendment 39–18565; AD 2016–13–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–08–05 for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. AD 2016–08–05 required replacement of affected angle of attack (AOA) transducers. This new AD requires the same actions as AD 2016–08–05. This new AD was prompted by a report of a typographical error in the regulatory text of AD 2016–08–05. We are issuing this AD to detect and replace incorrectly calibrated AOA transducers; incorrect calibration of the transducers could result in late activation of the stick pusher.

DATES: This AD is effective July 7, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 18, 2016 (81 FR 21709, April 13, 2016).

We must receive comments on this AD by August 8, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax: 514–855–7401; email: *ac.yul@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7265.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7265; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

On March 31, 2016, we issued AD 2016–08–05, Amendment 39–18481 (81 FR 21709, April 13, 2016) ("AD 2016–08–05"), for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. AD 2016–08–05 was prompted by the discovery of a number of incorrectly calibrated AOA transducers installed in the stall protection system. AD 2016–08–05 required replacement of affected AOA transducers. We issued AD 2016–08–05 to detect and replace incorrectly calibrated AOA transducers; incorrect calibration of the transducers could result in late activation of the stick pusher.

Since we issued AD 2016–08–05, we received a report of a typographical error in the regulatory text of AD 2016–08–05. Paragraph (h) of AD 2016–08–05 inadvertently stated, "having a part number or serial number." This should have stated "having a part number and serial number." We have revised paragraph (h) of this AD accordingly.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2015–18, dated July 16, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24

(Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> It was discovered that a number of AOA transducers installed on Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 aeroplanes were incorrectly calibrated due to a quality control problem at both the production and repair facilities. Incorrect calibration of the AOA transducer could result in a late activation of the stick pusher.
>
> This [Canadian] AD mandates the replacement of the incorrectly calibrated AOA transducer.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7265.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 670BA–27–069, dated March 30, 2015. This service information describes procedures for replacement of incorrectly calibrated AOA transducers with correctly calibrated AOA transducers. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

FAA's Justification and Determination of the Effective Date

We are superseding AD 2016–08–05 to correct a typographical error in the regulatory text. No other changes have been made to AD 2016–08–05. Therefore, we determined that notice and opportunity for public comment are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7265; Directorate Identifier 2016–NM–084–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 400 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $10,000 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $4,136,000, or $10,340 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2016–08–05, Amendment 39–18481 (81 FR 21709, April 13, 2016), and adding the following new AD:

2016–13–01 Bombardier, Inc.: Amendment 39–18565. Docket No. FAA–2016–7265; Directorate Identifier 2016–NM–084–AD.

(a) Effective Date

This AD is effective July 7, 2016.

(b) Affected ADs

This AD replaces AD 2016–08–05, Amendment 39–18481 (81 FR 21709, April 13, 2016) ("AD 2016–08–05").

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 through 10999 inclusive.

(2) Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15990 inclusive.

(3) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19990 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by the discovery of a number of incorrectly calibrated angle of attack (AOA) transducers installed in the stall protection system. We are issuing this AD to detect and replace incorrectly calibrated AOA transducers; incorrect calibration of the transducers could result in late activation of the stick pusher.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Replacement of AOA Transducers With No Changes

This paragraph restates the requirements paragraph (g) of AD 2016–08–05, with no changes. Within 2,500 flight hours or 12 months, whichever occurs first after May 18, 2016 (the effective date of AD 2016–08–05), replace the AOA transducers identified in paragraph 1.A., "Effectivity," of Bombardier Service Bulletin 670BA–27–069, dated March 30, 2015, with correctly calibrated AOA transducers, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–069, dated March 30, 2015.

(h) Retained Parts Installation Prohibition, With a Change to the Affected Parts Language

This paragraph restates the parts installation prohibition specified in paragraph (h) of AD 2016–08–05, with a change to the affected parts language. As of May 18, 2016 (the effective date of AD 2016–08–05), no person may install, on any airplane, an AOA transducer having a part number and serial number listed in paragraph 1.A., "Effectivity," of Bombardier Service Bulletin 670BA–27–069, dated March 30, 2015.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2015–18, dated July 16, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7265.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on May 18, 2016, (81 FR 21709, April 13, 2016).

(i) Bombardier Service Bulletin 670BA–27–069, dated March 30, 2015.

(ii) Reserved.

(4) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax: 514–855–7401; email: *ac.yul@aero.bombardier.com;* Internet: *http://www.bombardier.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 13, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14579 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0105; Directorate Identifier 2008–SW–58–AD; Amendment 39–18562; AD 2016–12–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2000–05–17 and AD 2001–04–12, which apply to Eurocopter France (now Airbus Helicopters) Model EC120B helicopters. AD 2000–05–17 and AD 2001–04–12 required repetitive visual checks of the engine-to-main gearbox (MGB) coupling tube assembly (coupling tube) for a crack and replacing any cracked tube with an airworthy tube. This new AD requires removing certain engine mount parts from service, measuring the height of the engine mounting base for certain helicopters, replacing the engine mount if a certain height is exceeded, inspecting the flared coupling on certain helicopters for a crack, and replacing the coupling if it is cracked. Since we issued AD 2000–05–17 and AD 2001–04–12, there have been reports of additional cracks in coupling tubes. These actions are intended to prevent coupling tube failure, loss of engine drive, and a subsequent forced landing of the helicopter.

DATES: This AD is effective July 27, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 27, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0105.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov in* Docket No. FAA–2014–0105; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the Direction Generale de L'Aviation Civile (DGAC) AD, any incorporated-by-reference information, the economic evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James Blyn, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *james.blyn@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On May 29, 2015, we issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 2000–05–17 (65 FR 13875, March 15, 2000) and AD 2001–04–12 (66 FR 13232, March 5, 2001) and add a new AD. AD 2000–05–17 applied to Model EC120B helicopters with engine coupling tube part number (P/N) C631A1002101 and required recurring inspections of each coupling tube for a crack and replacing any cracked coupling tube with a reinforced coupling tube P/N C631A1101101. AD 2001–04–12 applied to Model EC120B helicopters with engine coupling tube P/N C631A1101101 and required repetitive visual checks of each coupling tube for a crack. AD 2000–05–17 and AD 2001–04–12 were prompted by reports of cracks on the reinforced coupling tube and were intended to prevent coupling tube failure, loss of engine drive, and a subsequent forced landing.

The NPRM published in the **Federal Register** on June 16, 2015 (80 FR 34335). The NPRM was prompted by reports of additional cracks in coupling tubes. Eurocopter France (now Airbus Helicopters) determined that the washer-type engine mount may, in certain cases, induce excessive loading on the coupling tube, which results in binding that increases component wear of the inner diameter of the mounting base. Because of this, the DGAC, on behalf of the European Aviation Safety Agency (EASA), issued AD No. F–2003–325 R1, dated May 12, 2004, for Model EC120B helicopters with engine coupling tube, P/N C631A1101101, and with an engine mount containing certain parts listed in Eurocopter Alert Service Bulletin (ASB) No. 04A005, dated July 16, 2003. DGAC AD No. F–2003–325 R1 requires inspections for helicopters with an engine mount block modified in accordance with Eurocopter Service Bulletin (SB) No. 71–003, Revision 1, dated July 18, 2002; replacing any coupling tube that has a crack; and increasing the life limit of the coupling tube from 1,000 flight hours to 20,000 flight hours. Also, DGAC AD No. F–2003–325 R1 requires, for helicopters with a new spring-loaded engine suspension modification in accordance with Eurocopter SB No. 71–005, Revision 0, dated May 14, 2004, increasing the life limit of the coupling tube to 20,000 flight hours and canceling the repetitive inspections of the coupling tube.

The NPRM proposed to require, for helicopters with certain engine mounts, before further flight, removing from service certain engine mount parts and measuring the height of the engine mounting base. If the height is more than 10.5 millimeters, the NPRM proposed replacing the engine mount with an engine mount that does not have the affected parts. For certain other helicopters, the NPRM proposed to require within 25 hours time-in-serice (TIS) replacing the spring-type engine suspension system, dye-penetrant inspecting the flared coupling for a crack, and replacing any cracked flared coupling. The NPRM also proposed removing coupling tube P/N C631A1002101 from service and prohibiting installation of that coupling tube on any helicopter.

Since the NPRM was issued, the FAA Southwest Regional Office has relocated and a group email address has been established for requesting an FAA alternative method of compliance for a helicopter of foreign design. We have revised the contact information throughout this final rule to reflect the new address and new email address.

Comments

After our NPRM (80 FR 34335, June 16, 2015) was published, we received comments from one commenter.

Request

Airbus Helicopters disagrees with the proposed requirement to replace the spring-type engine suspension system in accordance with Eurocopter SB No. 71–005 for helicopters with an improved engine mount under Eurocopter SB No. 71–003. Airbus Helicopters states there have been no coupling tube failures since incorporation of Eurocopter SB No. 71–003, and therefore the proposed requirement would not increase safety levels.

We disagree. Installing the improved engine mount specified in Eurocopter SB No. 71–003 extends the compliance time for a recurring visual inspection of the coupling tube from 5 hours TIS to 25 hours TIS. When issued, that recurring inspection was considered a short-term interim action until an effective modification or action was developed, approved, and available. Eurocopter SB No. 71–005 contained such an effective action to cancel that interim action and was developed and approved in May 2004.

Airbus Helicopters requested that, if we mandate the proposed requirement to replace the spring-type engine suspension system in accordance with Eurocopter SB No. 71–005, we change the proposed compliance time from 25 hours TIS to 18 months to allow for availability of parts.

We disagree. Eurocopter SB No. 71–005 was approved May 13, 2004. The NPRM was published June 16, 2015. The substantial amount of time that has passed since the approval of the service information and publication of our NPRM provided operators with enough notice of our proposal to mandate that procedure such that availability of parts should not be an issue.

FAA's Determination

This helicopter has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, the DGAC on behalf of EASA, has kept the FAA informed of the situation described above. We are issuing this AD because we evaluated all information provided by the DGAC, reviewed the relevant information, considered the comments received, and determined the unsafe condition exists and is likely to exist or develop on other helicopters of this same type design and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information Under 1 CFR Part 51

Eurocopter issued ASB No. 04A005, Revision 0, dated July 16, 2003, which prohibits, after June 30, 2004, operating an engine mount made up of the following parts: Support arm, P/N C714A1107201; swaged support arm, P/N C714A1106201; left-hand support bracket, P/N C714A1101102; and right-hand support bracket, P/N C714A1101103. ASB No. 04A005 also specifies measuring the height of the engine mounting base and, if the height is more than 10.5 millimeters, replacing the engine mount with an engine mount that does not have the specified P/N. ASB No. 04A005 does not apply to helicopters modified with an improved engine mount in accordance with SB No. 71–003. ASB No. 04A005 also does not apply to helicopters with a serial number 1170 or larger, as the specified engine mounts are not installed on those helicopters.

Eurocopter also issued SB No. 71–005, Revision 0, dated May 14, 2004, which contains procedures to modify the spring-type engine suspension system and dye-penetrant inspect the flared coupling assembly.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

Eurocopter issued SB No. 71–003, Revision 1, dated July 18, 2002, which contains procedures to improve the engine mount. Eurocopter also issued ASB No. 05A003, Revision 2, dated July 16, 2003, for helicopters that have not been modified with an improved engine mount in accordance with SB No. 71–003, which specifies inspecting the coupling tube for a crack every 5 hours and establishing a coupling tube life limit of 1,000 hours. For helicopters that have been modified with an improved engine mount, ASB No. 05A003 specifies inspecting the coupling tube for a crack every 25 hours and increasing the coupling tube life limit to 20,000 hours. ASB No. 05A003 was revised to Revision 3, dated May 11, 2004, to specify an optional spring-type engine suspension modification and cancel the repetitive inspection for this modified configuration.

Differences Between This AD and the DGAC AD

This AD requires the installation of the spring-type engine suspension modification specified in Eurocopter SB No. 71–005 and does not require the repetitive inspection of the coupling tube and the engine mount base. This AD also does not require you to contact the manufacturer.

Costs of Compliance

We estimate that this AD will affect 23 helicopters of the 115 helicopters of U.S. Registry. At an average labor rate of $85 per work-hour, we estimate that operators may incur the following costs in order to comply with this AD.

Installing new mounting arms and brackets requires about 12 work-hours and required parts cost $9,194, for a total cost per helicopter of $10,214 and $234,922 for the U.S. fleet. Installing the mounting spring kit requires about 14 work-hours and required parts cost $14,621, for a total cost per helicopter of $15,811 and $363,653 for the U.S. fleet. Dye-penetrant inspecting the coupling tube requires about 1 work-hour for a cost per helicopter of $85 and $1,955 for the U.S. fleet.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that a regulatory, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2000–05–17, Amendment 39–11627 (65 FR 13875, March 15, 2000); and AD 2001–04–12, Amendment 39–12131 (66 FR 13232, March 5, 2001); and

■ b. Adding the following new AD:

2016–12–13 Airbus Helicopters (Previously Eurocopter France): Amendment 39–18562; Docket No. FAA–2014–0105; Directorate Identifier 2008–SW–58–AD.

(a) Applicability

This AD applies to Model EC120B helicopters with an engine-to-main gearbox coupling tube assembly (coupling tube), part number (P/N) C631A1101101 or P/N C631A1002101, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a coupling tube. This condition could result in coupling tube failure, loss of engine drive, and a subsequent forced landing of the helicopter.

(c) Affected ADs

This AD supersedes AD 2000–05–17, Amendment 39–11627 (65 FR 13875, March 15, 2000) and AD 2001–04–12, Amendment 39–12131 (66 FR 13232, March 5, 2001).

(d) Effective Date

This AD becomes effective July 27, 2016.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) For helicopters with a serial number up to and including 1169, not modified with an improvement of the engine mount in accordance with Eurocopter Service Bulletin (SB) No. 71–003, Revision 1, dated July 18, 2002 (SB 71–003), or not modified by installing a spring-type engine suspension system in accordance with Eurocopter SB No. 71–005, Revision 0, dated May 14, 2004 (SB 71–005), before further flight:

(i) Remove from service the following engine mount parts:

(A) Support arm, P/N C714A1107201;

(B) Swaged support arm, P/N C714A1106201;

(C) Left-hand support bracket, P/N C714A1101102; and

(D) Right-hand support bracket, P/N C714A1101103.

(ii) Measure the height of the engine mounting base as depicted in Figure 1 of Eurocopter Alert SB No. 04A005, Revision 0, dated July 16, 2003. If the height is more than 10.5 millimeters, replace the engine mount with an engine mount that does not have the parts identified in paragraph (f)(1)(i) of this AD.

(2) For helicopters with a serial number 1170 and larger or helicopters modified with an improvement of the engine mount in accordance with SB 71–003:

(i) Within 25 hours TIS, replace the spring-type engine suspension system and perform a dye-penetrant inspection of the flared coupling for a crack by following the Accomplishment Instructions, paragraphs 2.B.2.a through 2.B.2.c of SB 71–005.

(ii) If there is a crack in the flared coupling, before further flight, replace the coupling with an airworthy coupling.

(3) For helicopters with coupling tube, P/N C631A1002101, installed, before further flight, remove coupling tube, P/N C631A1002101, from service. Do not install coupling tube, P/N C631A1002101, on any helicopter.

(g) Special Flight Permits

Special flight permits may be issued provided there are no cracks in the coupling tube attachment fitting.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: James Blyn, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(i) Additional Information

(1) Eurocopter Alert Service Bulletin (ASB) No. 05A003, Revision 2, dated July 16, 2003; Eurocopter ASB No. 05A003, Revision 3, dated May 11, 2004; and Eurocopter Service Bulletin No. 71–003, Revision 1, dated July 18, 2002; which are not incorporated by reference, contain additional information about the subject of this final rule. For Eurocopter service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in Direction Generale de L'Aviation Civile (DGAC) AD No. F–2003–325 R1, Revision 1, dated May 12, 2004. You may view the DGAC AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0105.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 6310, Engine/Transmission Coupling—Coupling Tube, Engine Mount, and Engine Mount Base.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Eurocopter Alert Service Bulletin No. 04A005, Revision 0, dated July 16, 2003.

(ii) Eurocopter Service Bulletin No. 71–005, Revision 0, dated May 14, 2004.

(3) For Eurocopter service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on June 9, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–14467 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31084; Amdt. No. 527]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, July 21, 2016.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on June 17, 2016.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, July 21, 2016.

PART 95—[AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 527, effective date July 21, 2016]

From	To	MEA
§ 95.6001 Victor Routes—U.S.		
§ 95.6025 VOR Federal Airway V25 Is Amended to Read in Part		
VENTURA, CA VOR/DME	DEANO, CA FIX	6000
DEANO, CA FIX	*SAN MARCUS, CA VORTAC	6200
*7600—MCA SAN MARCUS, CA	VORTAC, NW BND.	
§ 95.6026 VOR Federal Airway V26 Is Amended to Read in Part		
EDGRR, WI FIX	WAUSAU, WI VORTAC	*6000
*3600—MOCA		
*3600—GNSS MEA		
WAUSAU, WI VORTAC	CHURP, WI FIX	*8000
*3000—GNSS MEA		
CHURP, WI FIX	GREEN BAY, WI VORTAC	*7000
*2400—MOCA		
§ 95.6067 VOR Federal Airway V67 Is Amended to Read in Part		
CEDAR RAPIDS, IA VOR/DME	*LYERS, IA FIX	2900
*3200—MRA		
*LYERS, IA FIX	WATERLOO, IA VOR/DME	2900
*3200—MRA		
§ 95.6077 VOR Federal Airway V77 Is Amended to Read in Part		
WATERLOO, IA VOR/DME	WAUKON, IA VORTAC	*3000
*2800—MOCA		
§ 95.6097 VOR Federal Airway V97 Is Amended to Read in Part		
NOISE, TN FIX	LONDON, KY VORTAC	*5000
*4200—MOCA		
LONDON, KY VORTAC	REBEL, KY FIX	*3400
*2900—MOCA		
§ 95.6120 VOR Federal Airway V120 Is Amended to Read in Part		
MASON CITY, IA VORTAC	*AREDA, IA FIX	**3000
*4500—MRA		
**2800—MOCA		
*AREDA, IA FIX	**SEATS, IA FIX	***3000
*4500—MRA		
**4500—MRA		
***2800—MOCA		
§ 95.6139 VOR Federal Airway V139 Is Amended to Read in Part		
DUNFE, VA FIX	SNOW HILL, MD VORTAC	*4000
*1600—MOCA		

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 527, effective date July 21, 2016]

From	To	MEA
§ 95.6146 VOR Federal Airway V146 Is Amended to Read In Part		
PROVIDENCE, RI VORTAC	MARTHAS VINEYARD, MA VOR/DME	2100
§ 95.6148 VOR Federal Airway V148 Is Amended to Read In Part		
ALEEN, WI FIX #UNUSABLE	HAYWARD, WI VOR/DME	#
HAYWARD, WI VOR/DME *5200—MCA IRONWOOD, MI	*IRONWOOD, MI VORTAC VORTAC, SW BND.	10000
§ 95.6165 VOR Federal Airway V165 Is Amended to Read In Part		
JEFFY, CA FIX *8600—MCA LOPES, CA	*LOPES, CA FIX FIX, S BND.	9000
LOPES, CA FIX *7300—MCA ARVIN, CA	*ARVIN, CA FIX FIX, SE BND.	8500
§ 95.6167 VOR Federal Airway V167 Is Amended to Read In Part		
JEWIT, CT FIX	PROVIDENCE, RI VORTAC	2500
§ 95.6186 VOR Federal Airway V186 Is Amended to Read In Part		
SAN MARCUS, CA VORTAC	DEANO, CA FIX	6200
DEANO, CA FIX *5100—MCA HENER, CA	*HENER, CA FIX FIX, E BND.	5000
HENER, CA FIX	FILLMORE, CA VORTAC	6300
FILLMORE, CA VORTAC	VAN NUYS, CA VOR/DME	6000
VAN NUYS, CA VOR/DME	TIFNI, CA FIX	5500
PARADISE, CA VORTAC	TANNR, CA FIX	6000
§ 95.6187 VOR Federal Airway V187 Is Amended to Read In Part		
MANCA, CO FIX *12800—MOCA #MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.	HERRM, CO FIX	#*15000
§ 95.6197 VOR Federal Airway V197 Is Amended to Read In Part		
PARADISE, CA VORTAC *5800—MCA POMONA, CA	*POMONA, CA VORTAC VORTAC, NW BND.	4500
FISCH, CA FIX *9300—MCA KELEN, CA **10200—MOCA	*KELEN, CA FIX FIX, SE BND.	**10200
KELEN, CA FIX *7300—MCA ARVIN, CA	*ARVIN, CA FIX FIX, SE BND.	8500
§ 95.6198 VOR Federal Airway V198 is Amended to Read in Part		
TIBBY, LA VOR/DME	HARVEY, LA VORTAC	2100
§ 95.6248 VOR Federal Airway V248 is Amended to Read in Part		
AVENAL, CA VOR/DME	SCRAP, CA FIX	4000
§ 95.6310 VOR Federal Airway V310 is Amended to Read in Part		
LOUISVILLE, KY VORTAC *2900—MOCA	LONDON, KY VORTAC	*3300
LONDON, KY VORTAC *3800—MOCA	ROSAR, KY FIX	*5500
§ 95.6345 VOR Federal Airway V345 Is Amended to Read In Part		
EAU CLAIRE, WI VORTAC *3100—MOCA *4000—GNSS MEA #HAYWARD R–178 UNUSABLE USE EAU CLAIRE R–357	HAYWARD, WI VOR/DME	#*5200

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 527, effective date July 21, 2016]

From	To	MEA
§ 95.6347 VOR Federal Airway V347 Is Amended to Read in Part		
LONDON, KY VORTAC	HINCH MOUNTAIN, TN VORTAC	*4700
*4600—MOCA		
§ 95.6459 VOR Federal Airway V459 Is Amended to Read in Part		
JEFFY, CA FIX	*LOPES, CA FIX	9000
*8600—MCA LOPES, CA	FIX, S BND.	
LOPES, CA FIX	*WRING, CA FIX	8500
*5800—MCA WRING, CA	FIX, SE BND.	
§ 95.6517 VOR Federal Airway V517 Is Amended to Read in Part		
LONDON, KY VORTAC	LOGIC, KY FIX	2900
§ 95.6552 VOR Federal Airway V552 Is Amended to Read in Part		
*GRICE, LA FIX	TIBBY, LA VOR/DME	2000
*4000—MRA		
TIBBY, LA VOR/DME	HARVEY, LA VORTAC	2100
§ 95.6562 VOR Federal Airway V562 Is Amended to Read in Part		
DRAKE, AZ VORTAC	PEACH SPRINGS, AZ VORTAC	9200
§ 95.6597 VOR Federal Airway V597 Is Amended to Read in Part		
FILLMORE, CA VORTAC	VAN NUYS, CA VOR/DME	6000
VAN NUYS, CA VOR/DME	DARTS, CA FIX	5500
§ 95.6311 Alaska VOR Federal Airway V311 Is Amended to Read in Part		
ANNETTE ISLAND, AK VOR/DME	*TOKEE, AK FIX	6000
*9000—MCA TOKEE, AK	FIX, NW BND.	
TOKEE, AK FIX	WIBTA, AK FIX	*9000
*4700—MOCA		
WIBTA, AK FIX	FLIPS, AK FIX.	
	W BND	*7500
	E BND	*9000
*6300—MOCA		
FLIPS, AK FIX	BIORKA ISLAND, AK VORTAC.	
	W BND	6100
	E BND	7500
§ 95.6473 Alaska VOR Federal Airway V473 Is Amended to Read in Part		
FLIPS, AK FIX	BIORKA ISLAND, AK VORTAC.	
	W BND	6100
	E BND	7500

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7005 Jet Route J5 Is Amended to Read in Part			
POWEL, OR FIX	SUMMA, WA FIX	24000	45000
§ 95.7054 Jet Route J54 Is Amended to Read in Part			
OLYMPIA, WA VORTAC	BAKER CITY, OR VOR/DME	#24000	45000
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			
§ 95.7086 Jet Route J86 Is Amended to Read in Part			
BOULDER CITY, NV VORTAC	PEACH SPRINGS, AZ VORTAC	18000	45000

From	To	Distance
§ 95.8003 VOR Federal Airway Changeover Point **Airway Segment Changeover Points Is Amended To Add Changeover Point V148**		
HAYWARD, WI VOR/DME HAYWARD	IRONWOOD, MI VORTAC	20
§ 95.8005 Jet Routes Changeover Points **Airway Segment Changeover Points Is Amended To Add Changeover Point J54**		
OLYMPIA, WA VORTAC OLYMPIA	BAKER CITY, OR VOR/DME	143

[FR Doc. 2016–14799 Filed 6–21–16; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 766

[Docket No. 151204999–6179–02]

RIN 0694–AG73

Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises the Bureau of Industry and Security's (BIS) guidance regarding administrative enforcement cases based on violations of the Export Administration Regulations (EAR). The rule rewrites that guidance in the EAR, setting forth the factors that the Office of Export Enforcement (OEE) considers when setting penalties in settlements of administrative enforcement cases and when deciding whether to pursue administrative charges or settle allegations of EAR violations. This final rule does not apply to alleged violations of regulations concerning restrictive trade practices and boycotts, which would continue to be subject to the guidance.

DATES: *Effective date:* July 22, 2016.

FOR FURTHER INFORMATION CONTACT: Norma Curtis, Assistant Director, Office of Export Enforcement, Bureau of Industry and Security. Tel: (202) 482–5036, or by email at *norma.curtis@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The mission of the Office of Export Enforcement (OEE) at BIS is to enforce the provisions of the Export Administration Regulations (EAR), secure America's trade, and preserve America's technological advantage by detecting, investigating, preventing, and deterring the unauthorized export and reexport of U.S.-origin items to parties involved with: (1) Weapons of mass destruction programs; (2) threats to national security or regional stability; (3) terrorism; or (4) human rights abuses. Export Enforcement at BIS is the only federal law enforcement agency exclusively dedicated to the enforcement of export control laws and the only agency constituted to do so with both administrative and criminal export enforcement authorities. OEE's criminal investigators and analysts leverage their subject-matter expertise, unique and complementary administrative enforcement tools, and relationships with other federal agencies and industry to protect our national security and promote our foreign policy interests. OEE protects legitimate exporters from being put at a competitive disadvantage by those who do not comply with the law. It works to educate parties to export transactions on how to improve export compliance practices, supporting American companies' efforts to be reliable trading partners and reputable stewards of U.S. national and economic security. BIS also discourages, and in some circumstances prohibits, U.S. companies from furthering or supporting any unsanctioned foreign boycott (including the Arab League boycott of Israel).

OEE at BIS may refer violators of export control laws to the U.S. Department of Justice for criminal prosecution, and/or to the Department's Office of the Chief Counsel for Industry and Security for administrative prosecution. In cases where there has been a willful violation of the EAR, violators may be subject to both criminal fines and administrative penalties. Administrative penalties may also be imposed when there is no willful intent, allowing administrative cases to be brought in a much wider variety of circumstances than criminal cases. OEE has a unique combination of administrative enforcement authorities including both civil penalties and denials of export privileges. BIS may also place individuals and entities on lists that restrict or prohibit their involvement in exports, reexports, and transfers (in-country).

In this rule, BIS amends the EAR to update its Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases (the "BIS Guidelines") found in Supplement No. 1 to part 766 of the EAR in order to make civil penalty determinations more predictable and transparent to the public and aligned with those promulgated by the Treasury Department's Office of Foreign Assets Control (OFAC). OFAC administers most of its sanctions programs under the International Emergency Economic Powers Act (IEEPA), the same statutory authority by which BIS implements the EAR. OFAC uses the transaction value as the starting point for determining civil penalties pursuant to its Economic Sanctions Enforcement Guidelines. Under IEEPA, criminal penalties can reach 20 years imprisonment and $1 million per violation, and administrative monetary penalties can reach $250,000 (subject to adjustment in accordance with U.S. law, *e.g.,* the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, sec. 701)) or twice the value of the transaction, whichever is greater. Both agencies coordinate and cooperate on investigations involving violations of export controls that each agency enforces, including programs relating to weapons of mass destruction, terrorism, Iran, Sudan, Specially Designated Nationals and Specially Designated Global Terrorists. This guidance would not apply to civil administrative enforcement cases for violations under part 760 of the EAR—Restrictive Trade Practices and Boycotts. Supplement No. 2 to Part 766 continues to apply to enforcement cases involving part 760 violations. This guidance also will not apply to pending matters where, as of July 22, 2016, there are ongoing settlement negotiations and a charging letter has not been filed.

Proposed Rule and Comments

On December 28, 2015, BIS published a proposed rule to amend the BIS Guidelines (80 FR 80710). BIS received eleven submissions commenting on the proposed rule.

Overall Approach and Relation to Export Control Reform

Comment: Several commenters, although making suggestions or raising concerns about specific provisions in the proposed rule, commended OEE and BIS for making the BIS Guidelines more transparent, predictable and consistent and for aligning them with OFAC's Economic Sanctions Enforcement Guidelines ("OFAC Guidelines"). One commenter noted that the OFAC Guidelines have "[h]istorically . . . withstood the test of time" and that "using them as a general model makes sense."

One submission, however, stated that the proposed rule fails to discuss how it advances the goal of Export Control Reform ("ECR") by not aligning the BIS Guidelines with the administrative penalties and procedures promulgated by the Department of State, Directorate of Defense Trade Controls ("DDTC") in the International Traffic in Arms Regulations ("ITAR"). The author submits that the alignment of BIS's enforcement policies and procedures with those of DDTC for enforcing export violations under the shared jurisdiction of BIS and DDTC would be more in line with the objectives of ECR.

Response: One of the primary goals of ECR is to transfer less sensitive military items from the United States Munitions List ("USML") to the more flexible licensing authority of the Commerce Department's Commerce Control List ("CCL"). ECR would thus enhance national security by (i) improving interoperability of U.S. military forces with allied countries, (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to "design out" and avoid U.S.-origin content and services, and (iii) allowing export control officials to focus government resources on transactions that pose greater concern. This goal has been largely accomplished.

It does not necessarily follow, however, that the manner in which controls are enforced on the items transferred to the CCL from the USML should involve aligning BIS Guidelines with those enforcement policies and procedures of DDTC. The licensing and enforcement functions of all three regulatory agencies—DDTC, BIS and OFAC—are encompassed within the ECR initiative. All three have defined jurisdictional roles over licensing exports. BIS has maintained a robust enforcement posture regarding violations of the EAR, and its policies and practices—including with regard to voluntary self-disclosures ("VSDs"), consideration of mitigating and aggravating factors, settlements and the imposition of civil monetary penalties—have historically been much more closely aligned with those of OFAC.

As stated in the proposed rule, both BIS and OFAC administer their regulations under the authority of the International Emergency Economic Powers Act, and the OFAC Guidelines serve as the only other published example of enforcement policies and practices promulgated under that statute. It is therefore consistent with the principles of ECR to bring the BIS Guidelines further into alignment with the OFAC Guidelines, which are more recent than BIS's current Guidelines and account for the higher penalties set forth in the International Emergency Economic Powers Enhancement Act of 2007.

Furthermore, the "higher fences" principle of ECR, referring to the more focused and concentrated enforcement efforts around the more significant military items that remain on the USML also applies to enforcement of items transferred to the CCL. Because of the more flexible licensing authority of the EAR that serves to facilitate trade (*e.g.,* License Exception STA), it is also paramount that the diversion risk with respect to such items of lesser military significance be monitored closely and that the deterrent effect of a strong enforcement response to violations be maintained.

Nevertheless, the proposed rule and this final rule share some characteristics with the enforcement policy of DDTC. Both DDTC and OEE have long placed great emphasis on the importance of VSDs, a policy that is reiterated and reinforced in the proposed rule and in this final rule. More generally, OEE sought to convey in the proposed rule the importance it places on the submission of VSDs, and underscored the fact that, over the past several years, on average only three percent of VSDs submitted have resulted in a civil monetary penalty. OEE does not expect that rate to change significantly, and OEE's practice is consistent with DDTC in responding to most VSDs submitted to it with a warning letter. Additionally, the proposed rule and this final rule provide that the use of funds that would otherwise be paid as a civil penalty may, in some cases, be suspended conditioned upon the respondent using funds in an equivalent amount for compliance activities required under the final order including improving internal compliance programs and conducting audits. Although such suspensions have been used by DDTC in the past, OEE has generally suspended penalties only due to inability to pay. For the foregoing reasons, BIS believes that aligning the BIS Guidelines with the OFAC Guidelines with the adoption of the DDTC practice noted above supports goals of the Export Control Reform Initiative and is making no changes in response to the comment that suggested otherwise.

Comment: One commenter stated that setting a base penalty amount based on whether a violation is egregious or non-egregious reduces uncertainty because exporters can assess whether a violation would be considered egregious based on past Office of Export Enforcement behavior for similar violations.

Response: BIS agrees with this comment and notes that all settlement agreements, charging letters and final orders are posted in the BIS electronic Freedom of Information Act reading room on the BIS Web site for public access.

Voluntary Self-Disclosures

A significant change in the proposed rule was the introduction of the concept of base penalty amounts for egregious and non-egregious apparent violations and the principle of reducing the base penalty amount by one-half if the case is based on a VSD. Base penalty amounts could then be adjusted based on aggravating, mitigating and general factors (which could be either aggravating or mitigating). The existing guidelines treat a VSD as a mitigating factor of "GREAT WEIGHT."

Comment: Several commenters expressed concern over the rule's treatment of VSDs, stating that the rule would reduce the incentive for voluntary disclosure and that it seemed to diminish the importance of VSDs. Some stated that the rule would unduly restrict OEE's ability to consider all aggravating and mitigating factors present in a complex fact pattern because the determination of the base penalty amount is based on only four factors. Others indicated that the rule was likely to result in civil penalties in cases that currently receive only a warning letter. One commenter predicted that the proposed rule's treatment of VSDs could limit the government's options for seeking a "global settlement" in a criminal case.

The commenters suggested several changes to the base penalty amount calculation and to the mitigating factors recognized by the guidelines to address, *inter alia,* the impact of the proposed guidelines on the incentive to voluntarily self-disclose violations. Those specific proposals are addressed under the headings "Base Penalty Policy" and "Mitigating Factors" below.

Response: OEE has not changed its view regarding the importance of VSDs and believes that the concern expressed by the commenters that OEE appears to be diminishing the role and importance of VSDs is misplaced. According a VSD 50% mitigation up front in determining the base penalty amount does not "diminish" the importance that OEE accords VSDs. The proposed rule would simply formalize the long-standing practice of OEE to accord up to 50% mitigation to VSDs by assigning them "great weight" as a mitigating factor. While in most instances OEE's practice has been to assign 50% mitigation for the submission and completion of VSDs that meet the requirements of § 764.5, the proposed rule would remove the discretion to assign anything less than that, thus enhancing, not diminishing, the importance of VSDs, and providing that they will result in an initial 50% reduction in the base penalty amount of any penalty to be determined.

OEE continues to encourage the submission of VSDs by persons who believe they may have violated the EAR. The purpose of an enforcement action includes raising awareness, increasing compliance, and deterring future violations, not merely punishing past conduct. VSDs are an indicator of a person's present intent and future commitment to comply with U.S. export control requirements. The purpose of mitigating the enforcement response in voluntary self-disclosure cases is to encourage the notification to OEE of apparent violations about which OEE would not otherwise have learned. As stated in the proposed rule, the submission of VSDs is a critical component of OEE's ability to collect information in carrying out its national security mission. Investigative leads provided by the public, including in the context of VSDs, provide an important tool used by the U.S. Government to enforce export regulations. OEE also is cognizant of the time, energy and financial expense of self-disclosing an apparent violation, especially when undertaken by small and medium enterprises.

OEE believes that the existing incentive of 50% mitigation is sufficient to encourage the submission of VSDs, which is further reinforced by the very low percentage of VSDs that result in civil monetary penalties. As noted above, over the past several years, on average only three percent of VSDs submitted have resulted in a civil monetary penalty. OEE does not expect that rate to change significantly as a result of these guidelines.

This final rule also makes changes to the formula for calculating the base penalty amounts and to the maximum effect of mitigating factors in response to the comments about their impact on VSDs and to comments suggesting that the base penalty amounts as proposed would provide OEE with insufficient flexibility in settlements. The changes to the base penalty amounts and impact of mitigating factors are discussed under the headings "Base Penalty Policy" and "Mitigating Factors" below.

Base Penalty Policy

Comment: Several commenters recommended changes to the proposed base penalty amounts. One commenter suggested that OEE may be faced with the prospect of feeling obliged to apply the other factors in such a way as to reduce the base penalty to a more appropriate level, which could produce a result-oriented exercise not entirely consistent with the purpose of the guidelines. Another stated that this formula could result in reduced prospects for settling cases because the penalty would be unrealistically high in cases with multi-million dollar transaction values. Another commenter suggested that this lack of flexibility could limit the government's options for seeking a comprehensive or "global" settlement of all civil and criminal penalties. To further encourage the submission of VSDs, one commenter advocated further decreasing the base penalty amount of the civil monetary penalty in instances involving VSDs as set forth in the Base Penalty Matrix. A commenter also urged that a reference to VSDs be added to the BIS Guidelines for purposes of evaluating General Factor E.—*Compliance Program* and to Mitigating Factor F. *Remedial Response,* in determining an appropriate civil monetary penalty amount.

Commenters proposed three different changes to the base penalty amount calculation to address this perceived lack of flexibility.

One proposed change was to set the base penalty for an egregious case that results from a VSD within a range from one-half the transaction value up to one-half of the statutory maximum and to set the base penalty in an egregious case that results from some source other than a VSD within a range from the applicable schedule amount and up to the statutory maximum.

Another proposed change was to set the base penalty amount of the civil monetary penalty in non-egregious cases involving a VSD at no greater than 10 percent of the transaction value, capped at a maximum of $25,000 per violation and in egregious cases involving a VSD to set base penalty at no greater than 10 percent of the statutory maximum applicable to the violation.

A third proposed change was to set a single range for base penalties in egregious cases from the applicable schedule amount to the applicable statutory maximum.

Response: OEE agrees that the formula stated in the proposed rule may have been too rigid and/or unduly restricted OEE's discretion in settling cases, potentially resulting in cases unlikely to be settled because of the unrealistically high penalties in certain cases. OEE is also cognizant of the concern that the potential inflexibility of the proposed formula could have limited the Government's options for seeking a comprehensive or "global settlement" of all criminal and civil penalties and the need to further encourage the submission of VSDs.

Accordingly, this final rule adopts a variation of the first of the proposals for calculating the base penalty amount noted above. The base penalty amount for an egregious case that results from a VSD will be changed from one-half the statutory maximum to a range of up to one-half of the statutory maximum. The base penalty amount for an egregious case that results from some source other than a VSD will be set at a range up to the statutory maximum whereas the proposed rule would have set the base penalty at the applicable statutory maximum. OEE believes that the adoption of this formula, along with changes related to the impact of mitigating factors on the penalty amount discussed below, will provide the degree of flexibility necessary to obtain a reasonable result in settlement negotiations.

OEE did not adopt the second proposal for calculating the base penalty amount which would have set the base penalty amount of the civil monetary penalty in non-egregious cases involving a VSD at no greater than 10 percent of the transaction value, capped at a maximum of $25,000 per violation and in egregious cases involving a VSD to set base penalty at no greater than 10 percent of the statutory maximum applicable to the violation. This proposal focused exclusively on cases based on VSDs and thus would not have addressed the need for greater flexibility in setting the base penalty amount for egregious cases that are not based on VSDs. In addition, this proposal would have set an extremely low base penalty amount for cases based on VSDs, which would then be subject to further adjustment based on other applicable factors. The selected proposal is in keeping with OEE's existing practice of a 50 percent reduction in the case of voluntary disclosures.

OEE did not adopt the third proposal, which would have set a single range from the applicable schedule amount to the applicable statutory maximum for all egregious cases whether based on a VSD or not. This proposal would have abandoned the principle of providing 50 percent reduction in base penalty amount in cases based on a VSD.

Aggravating Factors

Comment: One commenter stated that, under the proposed rule, a warning letter with no civil penalty could result only from a situation where there are no aggravating factors. The commenter stated that some aggravating factors are likely to be present in any transaction that results in a violation even though the violation does not result in harm to national security, economic or political concerns. The commenter listed some examples of conduct that might be construed as being within the scope of aggravating factor III.B.2—"having a reason to know based on readily available information." Those examples are: Misdelivering goods that are recovered and incorrectly entering data into the Automated Export System. Freight forwarders often input information from conflicting data provided by shippers or make inadvertent mistakes in entering names into screening software. Under the current guidelines, the commenter asserted, these cases likely would result in a warning letter or a no action letter.

Response: The commenter is incorrect. OEE would continue to issue warning letters in many cases including cases with some level of aggravation. In determining whether to conclude enforcement action with a warning letter or a no action letter, OEE would consider all aggravating, general and mitigating factors that apply to the action at issue. OEE does not anticipate that new penalty guidelines would increase the number of administrative enforcement actions brought by OEE. OEE believes that no change to the regulatory text is needed to make this point.

Comment: One commenter stated that the determination that a company acted with willfulness or recklessness because it "should reasonably have been on notice" that the conduct was a violation of the EAR should be modified to limit the applicability of Factor A. *Willful or Reckless Violation of Law* to instances where the company was on notice and clearly understood that its conduct was unlawful. The commenter stated that determining that a company acted with willfulness or recklessness because it "should reasonably have been on notice" that its conduct violated U.S. law would not be appropriate. Ignorance, the commenter said, should not be equated with willfulness or recklessness. Only if a company actually was on notice and clearly understood that its conduct violated U.S. law should OEE determine that willfulness or recklessness was involved.

Response: Use of the phrase "should reasonably have been on notice" as an example of conduct encompassed within the aggravating factor "*Willful or Reckless Violation of Law*" is adopted from the general factors set forth in the OFAC guidelines (*see* 31 CFR part 501, Appendix A, III.A.5). A higher threshold in BIS guidelines would create unnecessary inconsistencies between the agencies' policies and furthermore, OEE is not aware of any significant issue that OFAC's use of this language has created. Additionally, raising the threshold from "should reasonably have been on notice" to "was on notice" would unnecessarily increase the evidentiary burden on OEE. Therefore, OEE is making no changes to the rule in response to this comment.

Comment: One commenter observed that the first four factors (factors A, B, C and D in the proposed rule) upon which a determination of egregiousness may be made for purposes of determining the base penalty amount also appear to factor into the determination of the final penalty amount as aggravating factors. The commenter questioned whether this procedure risks penalizing the company twice for the same factors. The commenter recommended that the factors be limited to one phase or the other or that an internal mechanism be used to safeguard against the inadvertent stacking of these factors—perhaps with a monetary limit after employing the factors the first time in the base phase.

Response: As noted above, the proposed rule and this final rule differ in the method for determining the base penalty amount in egregious cases. The proposed rule would have set the base penalty amount at one-half of the applicable statutory maximum if the case was based on a VSD and at the statutory maximum if the case was based on something other than a VSD. Under this final rule, the base value in an egregious case will be an amount up to one-half of the applicable statutory maximum if the case is based on a VSD and an amount up to the applicable statutory maximum if the case is based on something other than a VSD. Under this procedure, substantial weight will generally be given to Factors A ("willful or reckless violation of law"), B ("awareness of conduct at issue"), C ("harm to regulatory program objectives"), and D ("individual characteristics"), with particular emphasis on Factors A, B, and C. A case will be considered an "egregious case" where the analysis of the applicable Factors, with a focus on Factors A, B, and C, indicates that the case represents a particularly serious violation of the law calling for a strong enforcement response. A determination by OEE that a case is "egregious" must have the concurrence of the Assistant Secretary of Commerce for Export Enforcement.

Aggravating factors A through D are thus germane at two stages of the process: First in determining whether a case is egregious or not and second in determining the degree of egregiousness. Once a case is determined to be egregious based on those factors, a range for determining the final penalty amount is established, either up to half the statutory maximum or up to the statutory maximum, depending upon whether or not the case was brought to OEE's attention pursuant to a VSD. The same factors will necessarily be considered in determining what final penalty will be set within the prescribed range. A determination as to whether a case is egregious is separate and apart from an evaluation of the degree of egregiousness. This rule thus does not preclude consideration of any of the factors A through D in determining the final penalty amount.

General Factors

Comment: One commenter stated that General Factor D—*Individual Characteristics,* which is also the fourth criterion for determining whether a violation is egregious, likely could be read in more than one way and that some amplification in the final rule would be welcomed. The commenter did not pose any specific questions about this factor.

Response: The proposed rule discussed five illustrative factors that could be considered in assessing this criterion. They are: the respondent's commercial sophistication, the size and sophistication of its operations, the volume and value of its apparent violations relative to the volume and value of all of its transactions, its regulatory history, any other illegal conduct in connection with the export, and prior criminal convictions of the respondent. Given the infinite possibilities for variation in human behavior, OEE cannot predict in advance all of the possible characteristics of the parties involved in an apparent violation that will ever be relevant in determining whether that apparent violation is egregious. The factors discussed in the proposed rule were intended to provide reasonable guidance as to how OEE would apply this factor. The commenter did not note any specific ambiguity or uncertainty in the proposed regulatory text describing this factor. On that basis, OEE concludes that additional discussion would not likely provide sufficient additional information to be useful and is making no changes to the rule in response to this comment.

Comment: One commenter expressed concern that the proposed rule appeared to diminish the importance of VSDs and could thereby discourage activities or programs by regulated parties to discover violations. To remedy this situation, the commenter recommended that a reference to VSDs be added to the elements of General Factor E—*Compliance Program* and to Mitigating Factor F—*Remedial Response.*

Response: As stated above, the importance of VSDs has not diminished and OEE certainly encourages activities designed to uncover violations. Accordingly, this final rule adds references to VSDs to the elements of General Factor E—*Compliance Program* and to Mitigating Factor F—*Remedial Response.* This rule also provides that a fully suspended monetary penalty is possible with conditions in certain non-egregious VSD cases.

Comment: One commenter said that not including past violations of an acquired entity where an acquirer takes reasonable action to discover, correct and disclose violations is a welcomed addition.

Response: OEE acknowledges the comment.

Mitigating Factors

Comment: One commenter stated that tips and leads from industry are valuable to enforcement; however, the companies that provide them receive little or no benefit for doing so. The commenter recommended creating a clear incentive for companies to provide information that comes to their attention by adding as a specific mitigating factor the phrase "Has the respondent previously made substantial voluntary efforts to provide information to Federal law enforcement authorities in support of U.S. export control legislation and regulations?"

Response: OEE agrees with the commenter's reasoning on this issue. In this final rule, Mitigating Factor G is modified to include the question: "Has the Respondent previously made substantial voluntary efforts to provide information (such as providing tips that led to enforcement actions against other parties) to federal law enforcement authorities in support of the enforcement of U.S. export control regulations?"

Comment: Another submission noted that in an apparent violation, a license exception may have been available but was not used or was used incorrectly. The commenter recommended that Factor H. License Was Likely to Be Approved be amended to acknowledge the availability of a license exception.

Response: OEE agrees that if a license exception that would have authorized the export was available at the time of export, but was not properly utilized or asserted by the respondent, that license exception availability should be treated as a mitigating factor. Accordingly, this final rule amends Mitigating Factor H by adding the question: "Would the export have qualified for a license exception?"

Comment: One commenter stated that the order in which mitigating factors are captured and applied in the mathematical formula is not clear. The commenter also stated that "to further complicate the equation, there is a cumulative mitigation cap at 75%."

Response: OEE believes that the order in which mitigating factors are considered will not affect the outcome of a case. Therefore this final rule does not specify the order in which the factors are to be considered. In recognition of the importance of voluntary self-disclosures, this final rule removes the proposed 75 percent limit on mitigation when the when the apparent violation is not egregious and investigation is based on a voluntary self-disclosure, but retains that limit in other cases.

Other Relevant Factors Considered on a Case-by-Case Basis

Comment: One commenter stated that violations should not be considered egregious on the basis of charging multiple violations on a single export.

Response: OEE agrees and would not consider multiple violations arising out of the same act in and of itself to constitute egregiousness. Consistent with current practice, for cases that settle before filing of a charging letter with an Administrative Law Judge, OEE will generally charge only the most serious violation per transaction. If OEE issues such a proposed charging letter and subsequently files a charging letter with an Administrative Law Judge because a mutually agreeable settlement cannot be reached, OEE will continue to reserve its authority to proceed with all available charges based on the facts presented. In this final rule, Section III.A.4 *Pattern of Conduct* has been modified to make this practice clear.

Comment: One commenter asserted that the criteria for determining whether violations are related would change under the proposed rule. The commenter noted that the current guidelines appear to use the criterion "whether they stemmed from the same underlying error or omission" to determine whether violations are related and stated that such language does not appear in the proposed guidelines. The commenter asserted that under the current guidelines, the insertion of inaccurate Electronic Export Information (EEI) data in many transactions because the respondent did not realize that a default value would have to be overridden likely would be considered related violations and probably would not result in increased penalties. The commenter stated that it is not clear whether the results would be the same under the proposed guidelines. Another commenter stated that the proposed rule would allow OEE to consider a lesser charge on related violations or it can consider them as separate chargeable offenses. The commenter stated that related violations should be lesser. The commenter asserted that the EAR could add on so many reporting requirements that one clerical mistake could result in an infinite number of violations. This would be unfair to the respondent. Related violations should not be treated as separate offenses.

Response: In certain situations where multiple recurring violations resulted from a single inadvertent error, such as misclassification, when determining whether to bring charges, OEE will generally regard that as one violation instead of multiple violations in determining if the matter is considered egregious. However, when determining a penalty, each violation is potentially chargeable. In this final rule Factor A.4 *Pattern of Conduct* is revised to make this point explicit.

Comment: A commenter questioned whether multiple shipments being exported to the same end user under an expired license would be counted separately or as one violation?

Response: OEE recognizes the importance of distinguishing between truly unrelated multiple violations and multiple violations arising out of the same fact pattern. OEE will continue to consider inadvertent, compounded clerical errors as related and not separate infractions for the purpose of determining if the case is egregious. In this final rule, Factor III.I *Related Violations* has been revised to make this point explicit.

No Action and Warning Letters

Comment: One commenter expressed appreciation of the introduction of "no action" determinations. To assist in emphasizing this option, the commenter recommended referring to it in the second sentence under heading "II. Types of Responses to Apparent Violations" and under the heading "III. Factors Affecting Administrative Sanctions"

Response: OEE agrees and this final rule adopts the recommendation.

Comment: One commenter stated that the guidelines appear to lower the threshold for issuing warning letters, resulting in the possibility of issuing warning letters in the absence of a violation. The commenter noted that current and proposed guidelines provide for a "no action" letter when OEE determines that there is insufficient evidence to conclude that a violation has occurred. However, the commenter referred to a difference between the current and proposed guidance regarding letters. The current guidelines provide that "OEE will not issue a warning letter if, based on available information, it concludes that a violation did not occur." The proposed guidelines, state that "If OEE determines that a violation may have occurred . . . . OEE may issue a warning letter." The proposed guidelines do not explicitly state that OEE will not issue a warning letter based on its conclusion that a violation did not occur as appears in the current guidelines. The commenter asserted that this difference between the current and proposed guidelines could mean the issuance of warning letters in situations where a violation did not occur. If such is the case, the commenter observed the difference could be significant in future investigations because the proposed guidelines provide that generally the base penalty amount will be reduced by up to 25 percent in the Respondent's first violation and a violation is considered a "first violation" if the respondent, among other things, did not receive a warning letter in three years preceding the date of the transaction giving rise to the violation. The commenters recommend that the guidelines state that there must be at least an apparent violation before a warning letter is issued.

Response: OEE would not issue a warning letter based on its conclusion that a violation did not occur. OEE agrees, however, that the consideration of warning letters within a 3-year time frame for purposes of determining whether a Respondent is entitled to up to 25% mitigation as a "first offense" is inconsistent when the warning letter does not constitute a finding that a violation did occur, with an opportunity for the Respondent to respond to the allegation.

Accordingly, this final rule revises Section IV.B.2.b of the guidelines to provide that first offense mitigation will therefore be determined without regard to the prior issuance of warning letters received by that Respondent. Prior issuance of a warning letter may, however, evidence a pattern and practice of non-compliance and failure to rectify compliance shortcomings and be considered aggravating under General Factor E. *Compliance Program* and Aggravating Factor A. *Willful or Reckless Violation of Law.* For example, if OEE alerted a Respondent to unlawful conduct through issuance of a warning letter and the current charges are a continuation of that conduct, or involve similar conduct, that fact may be taken into account.

Comment: One commenter observed that the statement in the proposed rule that warning letters will typically be issued for VSDs absent the presence of aggravating factors implies that in cases where aggravating factors are present, a civil monetary penalty would necessarily ensue.

Response: As discussed above, the commenter misunderstands the impact on VSDs. OEE issues a warning letter for almost all VSDs including those with aggravating factors. In recent years, OEE has only sought charges in a small percentage of VSD cases. While all cases charged had significant aggravating factors, many of the cases with warning letters also had aggravating factors, though less serious than in the cases charged. OEE does not believe that these guidelines will result in a significant change in the number of cases charged and is making no change to the guidelines in response to this comment.

Comment: Some commenters suggested that more certainty was needed with respect to the meaning of no action letters and warning letters. One commenter stated that the proposed rule would allow OEE to take no action if it determines that there is insufficient evidence to conclude that a violation has occurred, determines that a violation did not occur and/or, based on an analysis of the Factors outlined in Section III of the guidelines, concludes that the conduct does not rise to a level warranting an administrative response. However, the commenter asserted, OEE can "put time back on the clock anytime it desires and reprocess a 'final determination.' " The commenter stated that exporters need closure at some point. This practice is no less than double jeopardy, the commenter asserted.

Another commenter noted that a warning letter does not constitute a final agency determination as to whether a violation has occurred. This leaves the recipient in a state of uncertainty as to whether a violation occurred and, therefore, how to proceed in similar situations in the future. The commenter requested that OEE eliminate that perceived uncertainty by ensuring that a warning letter provide guidance as to whether OEE believes a violation occurred, and, if so, limit the warning to the substance of the violation.

Response: As stated in the proposed rule, the majority of cases brought to the attention of OEE through VSDs result in the issuance of warning letters, containing a finding that an apparent violation may have taken place. No action letters are simply that: No action will be taken in cases where there is insufficient evidence to conclude that a violation may have taken place. The use of the words "apparent" and "may" simply reflect that reality. In instances where it appears to OEE that a violation(s) did occur but that pursuing a civil monetary penalty is not appropriate under the circumstances, a warning letter will also be issued.

Although warning letters and no action letters constitute the final OEE disposition of the matter, neither constitutes final agency action with respect to a violation of the EAR. To help clarify this point, this final rule refers to OEE's disposition when describing OEE's action with respect to warning letters and no action letters, and clearly states that these are not "final agency actions."

Neither the proposed rule nor this final rule state that OEE may resume an investigation into a matter concerning which it previously issued a no action letter "anytime it desires." The proposed rule text stated that "A no-action determination represents a final determination (OEE's . . . disposition in this final rule) as to the apparent violation, unless OEE later learns of additional information regarding the same or similar transactions or other relevant facts." Reopening an investigation or inquiry because the enforcement agency learns of new relevant information does not constitute double jeopardy as that term is understood in connection with Fifth Amendment to the United States Constitution. OEE believes that no change to the rule is needed on this point.

Warning letters currently identify the transaction or conduct OEE believes violated the EAR and will continue to do so.

Transaction Value

Several commenters addressed the question of determining transaction value.

Comment: One commenter stated that where a violation is related to a transaction that has been reported into the Automated Export System (AES), that value should be relied upon as the transaction value unless there is evidence indicating that the reported AES value was erroneous or otherwise flawed because the commenter believed that approach to determining the transaction value is accurate. Two commenters pointed out the difficulty in determining the transaction value of the export or deemed export of technology. One commenter stated that the proposed rule standard of "the economic benefit derived by the Respondent" is extremely subjective and open to wide interpretation. The other commenter stated that "the value of a transaction identified on commercial invoices, customs declarations, or similar documents *may reflect the value of the media transferred instead of the technical data itself,* especially in situations where the data is not being sold, but is being used for offshore production or some other related activity." (Emphasis in the original.)

Response: This final rule amends the definition of "transaction value" by adding a reference to AES filings. However, it is impossible for OEE to determine in advance the appropriate method by which to value all exports or deemed exports of technology, particularly where the technology at issue is not traded widely enough to provide a basis for determining a market value, is being transferred to a firm related to the exporter, or is being transferred as part of a larger transaction involving an agreement to produce or repair a part or product. In such instances, OEE will have to apply the "the economic benefit derived by the Respondent" standard, which remains in this final rule.

Comment: Two commenters objected to penalizing a freight forwarder using the monetary value of a shipment, given that forwarding fees almost always represent a minor fraction of the value of goods being exported.

Response: OEE recognizes that the consequence of using the same transaction value for both forwarders and exporters may create the impression of disproportionate penalties on forwarders. However, OEE has and will continue to take into account that transaction values may not be indicative of the nature of a party's role in the transaction, including applying mitigation based on general factor D where appropriate. OEE believes that definition of "transaction value" provides adequate flexibility to achieve fair results and that a specific separate standard for freight forwarders is not needed. Accordingly, this final rule makes no changes in response to this comment.

Comment: One commenter raised six specific questions about how transaction value would be determined. OEE's response is set forth immediately following each question. OEE does not believe that any changes to the proposed rule are needed in response to these questions and this final rule makes none.

1. "In the proposed definition, what transaction is the 'subject transaction'"?

Response: The subject transaction is the transaction or transactions identified in a proposed charging letter or charging letter wherein OEE alleges that a violation occurred.

2. "How will the referenced documents (*e.g.,* commercial invoices, bills of lading, signed Customs declarations, or similar documents) be used in determining value"?

Response: In many cases, such documents will list a price or value that is likely to be the appropriate transaction value. However, in instances where OEE believes that the price or value listed in such documents is inaccurate or is otherwise inappropriate as a measure of transaction value, it may, in accordance with the definition, consider the market value of the items that were the subject of the transaction and/or, in limited situations, "the economic benefit derived by the Respondent" standard as noted above.

3. "How will BIS reconcile inconsistent information found in these related documents"?

Response: This will have to be determined on a case-by-case basis depending on the facts of each case.

4. "At what point in BIS's internal deliberations will the transaction value be considered as 'not otherwise ascertainable'"?

Response: This will have to be determined on a case-by-case basis depending on the facts of each case.

5. "Will the disclosing or investigated party be allowed an opportunity to speak to that issue before the conclusion is reached"?

Response: The respondent would have the opportunity to challenge OEE's transaction value determination during settlement negotiations or in pleadings before an administrative law judge.

6. "How will 'market value' and 'economic benefit' be evaluated"?

Response: OEE cannot determine in advance a method that always will be appropriate under any circumstance that may occur in the future. These determinations will have to be made on a case-by-case basis depending on the facts of each case.

Settlements

Two commentators expressed concern regarding the statements in the proposed Guidelines that "[p]enalties for settlements reached after the initiation of an enforcement proceeding and litigation through the filing of a charging letter will usually be higher than those described by these Guidelines" and that "[i]f a case does not settle before issuance of a charging letter and the case proceeds to adjudication, the resulting charging letter may include more violations than alleged in the proposed charging letter." The commenters stated that such practices could put inappropriate pressure to settle even if the respondent has a legitimate defense, or feels that the proposed penalty is excessive. They could constitute coercion and a denial of procedural due process. One commenter stated that BIS should establish reasonable limits concerning when it is appropriate for OEE to tack on additional charges or seek higher penalties than originally proposed.

Response: OEE notes that it is common in settlement negotiations for parties to seek early resolution in hopes of avoiding the expenditure of resources necessary to litigate a case. Doing so is not coercive, but the most efficient means of reaching resolution. It is common government practice for an agency, in an effort to reach settlement before trial, to propose a subset or sampling of charges, reserving the ability to bring a fuller set of charges should litigation prove necessary. It also is commonly recognized that the additional resources the government must expend to take a case to trial also can justify a penalty greater than the amount the agency may have accepted prior to litigation. Both practices are designed to efficiently utilize limited government resources and provide an incentive for early settlements. OEE considers the totality of the circumstances in charging and penalty determinations, including any defenses raised in response to a proposed charging letter and any arguments made concerning the appropriate penalty levels. OEE is making no changes to the proposed rule in response to these comments.

Comment: Two commenters suggested that the proposed rule seemed to state or at least imply that cases could not or would not be settled once adjudication begins or once a decision is made to initiate an enforcement action.

Response: Cases may be settled after OEE decides to initiate an enforcement action or after administrative adjudication begins. Section II.C of the proposed rule and this final rule state: "Cases may be settled before or after the issuance of a charging letter. *See* § 766.18 of the EAR." OEE believes that no change to the text of the proposed rule is needed to address this point.

OEE and BIS

Comment: Several commenters stated that references to OEE and BIS in the proposed rule are confused and undefined. That it is difficult to understand exactly who in BIS is responsible for doing what in the administrative enforcement process.

Response: OEE is the organizational unit of BIS that has been delegated the responsibility for determining what cases will be referred to the Department of Justice for criminal prosecution and what administrative sanctions will be sought. The reference to BIS in this final rule is therefore changed in most instances to refer specifically to OEE. This change was made throughout the guidelines for ease of reference even though, for example under § 764.1 of the EAR, OEE does not issue penalties.

Stylistic Change to the Structure of the Base Penalty Matrix

Comment: One commenter proposed delete the subheading "Egregious Case" from the base penalty matrix and changing the headings above the two columns by substituting "Non-Egregious" for "NO" and "Egregious" for "YES." The commenter stated that this change would make the penalty matrix easier to understand.

Response: This final rule addresses this matter by adding question marks immediately following the phrases "Egregious Case" and "Voluntary Self Disclosure," making clear that they are questions to which a yes or no answer is appropriate.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule does not contain any collections of information.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration at the proposed rule stage that this rule would not have a significant impact on a substantial number of small entities. The rationale for that certification is at 80 FR 80710, 80712 (December 28, 2015) and is not repeated here. BIS received no comments on the certification. Consequently, BIS has not prepared a final regulatory flexibility analysis.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015, (80 FR 48233 (Aug. 11, 2015)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

List of Subjects in 15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

Accordingly, this rule amends part 766 of the Export Administration Regulations (15 CFR parts 730–774) (EAR) as follows:

PART 766—[AMENDED]

■ 1. The authority citation for part 766 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 2. Supplement No. 1 to Part 766 is revised to read as follows:

Supplement No. 1 to Part 766—Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases

Introduction

This Supplement describes how the Office of Export Enforcement (OEE) at the Bureau of Industry and Security (BIS) responds to apparent violations of the Export Administration Regulations (EAR) and, specifically, how OEE makes penalty determinations in the settlement of civil administrative enforcement cases under part 764 of the EAR. This guidance does not apply to enforcement cases for violations under part 760 of the EAR—Restrictive Trade Practices or Boycotts. Supplement No. 2 to part 766 continues to apply to civil administrative enforcement cases involving part 760 violations.

Because many administrative enforcement cases are resolved through settlement, the process of settling such cases is integral to the enforcement program. OEE carefully considers each settlement offer in light of the facts and circumstances of the case, relevant precedent, and OEE's objective to achieve in each case an appropriate penalty and deterrent effect. In settlement negotiations, OEE encourages parties to provide, and will give serious consideration to, information and evidence that parties believe are relevant to the application of this guidance to their cases, to whether a violation has in fact occurred, or to whether they have an affirmative defense to potential charges.

This guidance does not confer any right or impose any obligation regarding what penalties OEE may seek in litigating a case or what posture OEE may take toward settling a case. Parties do not have a right to a settlement offer or particular settlement terms from OEE, regardless of settlement positions OEE has taken in other cases.

I. Definitions

Note: See also: Definitions contained in § 766.2 of the EAR.

Apparent violation means conduct that constitutes an actual or possible violation of the Export Administration Act of 1979, the International Emergency Economic Powers Act, the EAR, other statutes administered or enforced by BIS, as well as executive orders, regulations, orders, directives, or licenses issued pursuant thereto.

Applicable schedule amount means:

1. $1,000 with respect to a transaction valued at less than $1,000;
2. $10,000 with respect to a transaction valued at $1,000 or more but less than $10,000;
3. $25,000 with respect to a transaction valued at $10,000 or more but less than $25,000;
4. $50,000 with respect to a transaction valued at $25,000 or more but less than $50,000;
5. $100,000 with respect to a transaction valued at $50,000 or more but less than $100,000;
6. $170,000 with respect to a transaction valued at $100,000 or more but less than $170,000;
7. $250,000 with respect to a transaction valued at $170,000 or more.

Note to definition of applicable schedule amount. The applicable schedule amount may be adjusted in accordance with U.S. law, *e.g.*, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, sec. 701).

Transaction value means the U.S. dollar value of a subject transaction, as demonstrated by commercial invoices, bills of lading, signed Customs declarations, AES filings or similar documents. Where the transaction value is not otherwise ascertainable, OEE may consider the market value of the items that were the subject of the transaction and/or the economic benefit derived by the Respondent from the transaction, in determining transaction value. In situations involving a lease of U.S.-origin items, the transaction value will generally be the value of the lease. For purposes of these Guidelines, "transaction value" will not necessarily have the same meaning, nor be applied in the same manner, as that term is used for import valuation purposes at 19 CFR 152.103.

Voluntary self-disclosure means the self-initiated notification to OEE of an apparent violation as described in and satisfying the requirements of § 764.5 of the EAR.

II. Types of Responses to Apparent Violations

OEE, among other responsibilities, investigates apparent violations of the EAR, or any order, license or authorization issued thereunder. When it appears that such a violation may have occurred, OEE investigations may lead to no action, a warning letter or an administrative enforcement proceeding. A violation may also be referred to the Department of Justice for criminal prosecution. The type of enforcement action initiated by OEE will depend primarily on the nature of the violation. Depending on the facts and circumstances of a particular case, an OEE investigation may lead to one or more of the following actions:

A. *No Action.* If OEE determines that there is insufficient evidence to conclude that a violation has occurred, determines that a violation did not occur and/or, based on an analysis of the Factors outlined in Section III of these Guidelines, concludes that the conduct does not rise to a level warranting an administrative response, then no action will be taken. In such circumstances, if the investigation was initiated by a voluntary self-disclosure (VSD), OEE will issue a letter (a no-action letter) indicating that the investigation is being closed with no administrative action being taken. OEE may issue a no-action letter in non-voluntarily disclosed cases at its discretion. A no-action determination by OEE represents OEE's disposition of the apparent violation, unless OEE later learns of additional information regarding the same or similar transactions or other relevant facts. A no-action letter is not a final agency action with respect to whether a violation occurred.

B. *Warning Letter.* If OEE determines that a violation may have occurred but a civil penalty is not warranted under the circumstances, and believes that the underlying conduct could lead to a violation in other circumstances and/or that a Respondent does not appear to be exercising due diligence in assuring compliance with the statutes, executive orders, and regulations that OEE enforces, OEE may issue a warning letter. A warning letter may convey OEE's concerns about the underlying conduct and/or the Respondent's compliance policies, practices, and/or procedures. It may also address an apparent violation of a technical nature, where good faith efforts to comply with the law and cooperate with the investigation are present, or where the investigation commenced as a result of a voluntary self-disclosure satisfying the requirements of § 764.5 of the EAR, provided that no aggravating factors exist. In the exercise of its discretion, OEE may determine in certain instances that issuing a warning letter, instead of bringing an administrative enforcement proceeding, will achieve the appropriate enforcement result. A warning letter will describe the apparent violation and urge compliance. A warning letter represents OEE's enforcement response to and disposition of the apparent violation, unless OEE later learns of additional information concerning the same or similar apparent violations. A warning letter does not constitute a final agency action with respect to whether a violation has occurred.

C. *Administrative enforcement case.* If OEE determines that a violation has occurred and, based on an analysis of the Factors outlined in Section III of these Guidelines, concludes that the Respondent's conduct warrants a civil monetary penalty or other administrative sanctions, OEE may initiate an administrative enforcement case. The issuance of a charging letter under § 766.3 of the EAR initiates an administrative enforcement proceeding. Charging letters may be issued when there is reason to believe that a violation has occurred. Cases may be settled before or after the issuance of a charging letter. *See* § 766.18 of the EAR. OEE may prepare a proposed charging letter which could result in a case being settled before issuance of an actual charging letter. *See* § 766.18(a) of the EAR. If a case does not settle before issuance of a charging letter and the case proceeds to adjudication, the resulting charging letter may include more violations than alleged in the proposed charging letter, and the civil monetary penalty amounts assessed may be greater that those provided for in Section IV of these Guidelines. Civil monetary penalty amounts for cases settled before the issuance of a charging letter will be determined as discussed in Section IV of these Guidelines. A civil monetary penalty may be assessed for each violation. The maximum amount of such a penalty per violation is stated in § 764.3(a)(1), subject to adjustments under the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461), which are codified at 15 CFR 6.4. OEE will afford the Respondent an opportunity to respond to a proposed charging letter. Responses to charging letters following the institution of an enforcement proceeding under part 766 of the EAR are governed by § 766.3 of the EAR.

D. *Civil Monetary Penalty.* OEE may seek a civil monetary penalty if OEE determines that a violation has occurred and, based on the Factors outlined in Section III of these Guidelines, concludes that the Respondent's conduct warrants a monetary penalty. Section IV of these Guidelines will guide the agency's exercise of its discretion in determining civil monetary penalty amounts.

E. *Criminal Referral.* In appropriate circumstances, OEE may refer the matter to the Department of Justice for criminal prosecution. Apparent violations referred for criminal prosecution also may be subject to a civil monetary penalty and/or other administrative sanctions or action by BIS.

F. *Other Administrative Sanctions or Actions.* In addition to or in lieu of other administrative actions, OEE may seek sanctions listed in § 764.3 of the EAR. BIS may also take the following administrative actions, among other actions, in response to an apparent violation:

License Revision, Suspension or Revocation. BIS authorizations to engage in a transaction pursuant to a license or license exception may be revised, suspended or revoked in response to an apparent violation as provided in §§ 740.2(b) and 750.8 of the EAR.

Denial of Export Privileges. An order denying a Respondent's export privileges may be issued, as described in § 764.3(a)(2) of the EAR. Such a denial may extend to all export privileges, as set out in the standard terms for denial orders in Supplement No. 1 to part 764 of the EAR, or may be narrower in scope (*e.g.*, limited to exports of specified items or to specified destinations or customers). A denial order may also be suspended in whole or in part in accordance with § 766.18(c).

Exclusion from practice. Under § 764.3(a)(3) of the EAR, any person acting as an attorney, accountant, consultant, freight forwarder or other person who acts in a representative capacity in any matter before BIS may be excluded from practicing before BIS.

Training and Audit Requirements. In appropriate cases, OEE may require as part of a settlement agreement that the Respondent provide training to employees as part of its compliance program, adopt other compliance measures, and/or be subject to internal or independent audits by a qualified outside person. In those cases, OEE may suspend or defer a portion or all of the penalty amount if the suspended amount is applied to comply with such requirements.

G. *Suspension or Deferral.* In appropriate cases, payment of a civil monetary penalty may be suspended or deferred during a probationary period under a settlement agreement and order. If the terms of the settlement agreement or order are not adhered to by the Respondent, then suspension or deferral may be revoked and the full amount of the penalty imposed. *See* § 764.3(a)(1)(iii) of the EAR. In determining whether suspension or deferral is appropriate, OEE may consider, for example, whether the Respondent has demonstrated a limited ability to pay a penalty that would be appropriate for such violations, so that suspended or deferred payment can be expected to have sufficient deterrent value, and whether, in light of all of the circumstances, such suspension or deferral is necessary to make the financial impact of the penalty consistent with the impact of penalties on other parties who committed similar violations. OEE may also take into account when determining whether or not to suspend or defer a civil penalty whether the Respondent will apply a portion or all of the funds suspended or deferred to audit, compliance, or training that may be required under a settlement agreement and order, or the matter is part of a "global settlement" as discussed in more detail below.

III. Factors Affecting Administrative Sanctions

Many apparent violations are isolated occurrences, the result of a good-faith misinterpretation, or involve no more than simple negligence or carelessness. In such instances, absent the presence of aggravating factors, the matter frequently may be addressed with a no action determination letter or, if deemed necessary, a warning letter. Where the imposition of an administrative penalty is deemed appropriate, as a general matter, OEE will consider some or all of the following Factors in determining the appropriate sanctions in administrative cases, including the appropriate amount of a civil monetary penalty where such a penalty is sought and is imposed as part of a settlement agreement and order. These factors describe circumstances that, in OEE's experience, are commonly relevant to penalty determinations in settled cases. Factors that are considered exclusively aggravating, such as willfulness, or exclusively mitigating, such as situations where remedial measures were taken, are set forth below. This guidance also identifies General Factors—which can be either mitigating or aggravating—such as the presence or absence of an internal compliance program at the time the apparent violations occurred. Other relevant Factors may also be considered at the agency's discretion.

While some violations of the EAR have a degree of knowledge or intent as an element of the offense, OEE may regard a violation of any provision of the EAR as knowing or willful if the facts and circumstances of the case support that conclusion. For example, evidence that a corporate entity had knowledge at a senior management level may mean that a higher penalty may be appropriate. OEE will also consider, in accordance with Supplement No. 3 to part 732 of the EAR, the presence of any red flags that should have alerted the Respondent that a violation was likely to occur. The aggravating factors identified in the Guidelines do not alter or amend § 764.2(e) or the definition of "knowledge" in § 772.1, or other provisions of parts 764 and 772 of the EAR. If the violations are of such a nature and extent that a monetary fine alone represents an insufficient penalty, a denial or exclusion order may also be imposed to prevent future violations of the EAR.

Aggravating Factors

A. *Willful or Reckless Violation of Law.* OEE will consider a Respondent's apparent willfulness or recklessness in violating, attempting to violate, conspiring to violate, or causing a violation of the law. Generally, to the extent the conduct at issue appears to be the result of willful conduct—a deliberate intent to violate, attempt to violate, conspire to violate, or cause a violation of the law—the OEE enforcement response will be stronger. Among the factors OEE may consider in evaluating apparent willfulness or recklessness are:

1. *Willfulness.* Was the conduct at issue the result of a decision to take action with the knowledge that such action would constitute a violation of U.S. law? Did the Respondent know that the underlying conduct constituted, or likely constituted, a violation of U.S. law at the time of the conduct?

2. *Recklessness/gross negligence.* Did the Respondent demonstrate reckless disregard or gross negligence with respect to compliance with U.S. regulatory requirements or otherwise fail to exercise a minimal degree of caution or care in avoiding conduct that led to the apparent violation? Were there warning signs that should have alerted the Respondent that an action or failure to act would lead to an apparent violation?

3. *Concealment.* Was there a deliberate effort by the Respondent to hide or purposely obfuscate its conduct in order to mislead OEE, federal, state, or foreign regulators, or other parties involved in the conduct, about an apparent violation?

Note: Failure to voluntarily disclose an apparent violation to OEE does not constitute concealment.

4. *Pattern of Conduct.* Did the apparent violation constitute or result from a pattern or practice of conduct or was it relatively isolated and atypical in nature? In determining both whether to bring charges and, once charges are brought, whether to treat the case as egregious, OEE will be mindful of certain situations where multiple recurring violations resulted from a single inadvertent error, such as misclassification. However, for cases that settle before filing of a charging letter with an Administrative Law Judge, OEE will generally charge only the most serious violation per transaction. If OEE issues a proposed charging letter and subsequently files a charging letter with an Administrative Law Judge because a mutually agreeable settlement cannot be reached, OEE will continue to reserve its authority to proceed with all available charges in the charging letter based on the facts presented. When determining a penalty, each violation is potentially chargeable.

5. *Prior Notice.* Was the Respondent on notice, or should it reasonably have been on notice, that the conduct at issue, or similar conduct, constituted a violation of U.S. law?

6. *Management Involvement.* In cases of entities, at what level within the organization did the willful or reckless conduct occur? Were supervisory or managerial level staff aware, or should they reasonably have been aware, of the willful or reckless conduct?

B. *Awareness of Conduct at Issue:The Respondent's awareness of the conduct giving rise to the apparent violation.* Generally, the greater a Respondent's actual knowledge of, or reason to know about, the conduct constituting an apparent violation, the stronger the OEE enforcement response will be. In the case of a corporation, awareness will focus on supervisory or managerial level staff in the business unit at issue, as well as other senior officers and managers. Among the factors OEE may consider in evaluating the Respondent's awareness of the conduct at issue are:

1. *Actual Knowledge.* Did the Respondent have actual knowledge that the conduct giving rise to an apparent violation took place, and remain willfully blind to such conduct, and fail to take remedial measures to address it? Was the conduct part of a business process, structure or arrangement that was designed or implemented with the intent to prevent or shield the Respondent from having such actual knowledge, or was the conduct part of a business process, structure or arrangement implemented for other legitimate reasons that consequently made it difficult or impossible for the Respondent to have actual knowledge?

2. *Reason to Know.* If the Respondent did not have actual knowledge that the conduct took place, did the Respondent have reason to know, or should the Respondent reasonably have known, based on all readily available information and with the exercise of reasonable due diligence, that the conduct would or might take place?

3. *Management Involvement.* In the case of an entity, was the conduct undertaken with the explicit or implicit knowledge of senior management, or was the conduct undertaken by personnel outside the knowledge of senior management? If the apparent violation was

undertaken without the knowledge of senior management, was there oversight intended to detect and prevent violations, or did the lack of knowledge by senior management result from disregard for its responsibility to comply with applicable regulations and laws?

C. *Harm to Regulatory Program Objectives: The actual or potential harm to regulatory program objectives caused by the conduct giving rise to the apparent violation.* This factor would be present where the conduct in question, in purpose or effect, substantially implicated national security, foreign policy or other essential interests protected by the U.S. export control system, in view of such factors as the reason for controlling the item to the destination in question; the sensitivity of the item; the prohibitions or restrictions against the recipient of the item; and the licensing policy concerning the transaction (such as presumption of approval or denial). OEE, in its discretion, may consult with other U.S. agencies or with licensing and enforcement authorities of other countries in making its determination. Among the factors OEE may consider in evaluating the harm to regulatory program objectives are:

1. *Implications for U.S. National Security: The impact that the apparent violation had or could potentially have on the national security of the United States.* For example, if a particular export could undermine U.S. military superiority or endanger U.S. or friendly military forces or be used in a military application contrary to U.S. interests, OEE would consider the implications of the apparent violation to be significant.

2. *Implications for U.S. Foreign Policy: The effect that the apparent violation had or could potentially have on U.S. foreign policy objectives.* For example, if a particular export is, or is likely to be, used by a foreign regime to monitor communications of its population in order to suppress free speech and persecute dissidents, OEE would consider the implications of the apparent violation to be significant.

General Factors

D. *Individual Characteristics: The particular circumstances and characteristics of a Respondent.* Among the factors OEE may consider in evaluating individual characteristics are:

1. *Commercial Sophistication: The commercial sophistication and experience of the Respondent.* Is the Respondent an individual or an entity? If an individual, was the conduct constituting the apparent violation for personal or business reasons?

2. *Size and Sophistication of Operations: The size of a Respondent's business operations, where such information is available and relevant.* At the time of the violation, did the Respondent have any previous export experience and was the Respondent familiar with export practices and requirements? Qualification of the Respondent as a small business or organization for the purposes of the Small Business Regulatory Enforcement Fairness Act, as determined by reference to the applicable standards of the Small Business Administration, may also be considered.

3. *Volume and Value of Transactions: The total volume and value of transactions undertaken by the Respondent on an annual basis, with attention given to the volume and value of the apparent violations as compared with the total volume and value of all transactions.* Was the quantity and/or value of the exports high, such that a greater penalty may be necessary to serve as an adequate penalty for the violation or deterrence of future violations, or to make the penalty proportionate to those for otherwise comparable violations involving exports of lower quantity or value?

4. *Regulatory History: The Respondent's regulatory history, including OEE's issuance of prior penalties, warning letters, or other administrative actions (including settlements), other than with respect to antiboycott matters under part 760 of the EAR.* OEE will generally only consider a Respondent's regulatory history for the five years preceding the date of the transaction giving rise to the apparent violation. When an acquiring firm takes reasonable steps to uncover, correct, and voluntarily disclose or cause the voluntary self-disclosure to OEE of conduct that gave rise to violations by an acquired business before the acquisition, OEE typically will not take such violations into account in applying these factors in settling other violations by the acquiring firm.

5. *Other illegal conduct in connection with the export.* Was the transaction in support of other illegal conduct, for example the export of firearms as part of a drug smuggling operation, or illegal exports in support of money laundering?

6. *Criminal Convictions.* Has the Respondent been convicted of an export-related criminal violation?

Note: Where necessary to effective enforcement, the prior involvement in export violation(s) of a Respondent's owners, directors, officers, partners, or other related persons may be imputed to a Respondent in determining whether these criteria are satisfied.

E. *Compliance Program: The existence, nature and adequacy of a Respondent's risk-based BIS compliance program at the time of the apparent violation.* OEE will take account of the extent to which a Respondent complies with the principles set forth in BIS's Export Management System (EMS) Guidelines. Information about the EMS Guidelines can be accessed through the BIS Web site at *www.bis.doc.gov.* In this context, OEE will also consider whether a Respondent's export compliance program uncovered a problem, thereby preventing further violations, and whether the Respondent has taken steps to address compliance concerns raised by the violation, to include the submission of a VSD and steps to prevent reoccurrence of the violation that are reasonably calculated to be effective.

Mitigating Factors

F. *Remedial Response:* The Respondent's corrective action taken in response to the apparent violation. Among the factors OEE may consider in evaluating the remedial response are:

1. The steps taken by the Respondent upon learning of the apparent violation. Did the Respondent immediately stop the conduct at issue? Did the Respondent undertake to file a VSD?

2. In the case of an entity, the processes followed to resolve issues related to the apparent violation. Did the Respondent discover necessary information to ascertain the causes and extent of the apparent violation, fully and expeditiously? Was senior management fully informed? If so, when?

3. In the case of an entity, whether it adopted new and more effective internal controls and procedures to prevent the occurrence of similar apparent violations. If the entity did not have a BIS compliance program in place at the time of the apparent violation, did it implement one upon discovery of the apparent violation? If it did have a BIS compliance program, did it take appropriate steps to enhance the program to prevent the recurrence of similar violations? Did the entity provide the individual(s) and/or managers responsible for the apparent violation with additional training, and/or take other appropriate action, to ensure that similar violations do not occur in the future?

4. Where applicable, whether the Respondent undertook a thorough review to identify other possible violations.

G. *Exceptional Cooperation with OEE: The nature and extent of the Respondent's cooperation with OEE, beyond those actions set forth in Factor F.* Among the factors OEE may consider in evaluating exceptional cooperation are:

1. Did the Respondent provide OEE with all relevant information regarding the apparent violation at issue in a timely, comprehensive and responsive manner (whether or not voluntarily self-disclosed), including, if applicable, overseas records?

2. Did the Respondent research and disclose to OEE relevant information regarding any other apparent violations caused by the same course of conduct?

3. Did the Respondent provide substantial assistance in another OEE investigation of another person who may have violated the EAR?

4. Has the Respondent previously made substantial voluntary efforts to provide information (such as providing tips that led to enforcement actions against other parties) to federal law enforcement authorities in support of the enforcement of U.S. export control regulations?

5. Did the Respondent enter into a statute of limitations tolling agreement, if requested by OEE (particularly in situations where the apparent violations were not immediately disclosed or discovered by OEE, in particularly complex cases, and in cases in which the Respondent has requested and received additional time to respond to a request for information from OEE)? If so, the Respondent's entering into a tolling agreement will be deemed a mitigating factor.

Note: A Respondent's refusal to enter into a tolling agreement will not be considered by OEE as an aggravating factor in assessing a Respondent's cooperation or otherwise under the Guidelines.

H. *License Was Likely To Be Approved.* Would an export license application have likely been approved for the transaction had one been sought? Would the export have qualified for a License Exception? Some license requirements sections in the EAR also set forth a licensing policy (*i.e.*, a statement of the policy under which license applications will be evaluated), such as a general presumption of denial or case by case review. OEE may also consider the licensing history of the specific item to that destination and if the item or end-user has a history of export denials.

Other Relevant Factors Considered on a Case-by-Case Basis

I. *Related Violations.* Frequently, a single export transaction can give rise to multiple violations. For example, an exporter who inadvertently misclassifies an item on the Commerce Control List may, as a result of that error, export the item without the required export license and file Electronic Export Information (EEI) to the Automated Export System (AES) that both misstates the applicable Export Control Classification Number (ECCN) and erroneously identifies the export as qualifying for the designation "NLR" (no license required) or cites a license exception that is not applicable. In so doing, the exporter commits three violations: one violation of § 764.2(a) of the EAR for the unauthorized export and two violations of § 764.2(g) of the EAR for the two false statements on the EEI filing to the AES. OEE will consider whether the violations stemmed from the same underlying error or omission, and whether they resulted in distinguished or separate harm. OEE generally does not charge multiple violations on a single export, and would not consider the existence of such multiple violations as an aggravating factor in and of itself. It is within OEE's discretion to charge separate violations and settle the case for a penalty that is less than would be appropriate for unrelated violations under otherwise similar circumstances, or to charge fewer violations and pursue settlement in accordance with that charging decision. OEE generally will consider inadvertent, compounded clerical errors as related and not separate infractions when deciding whether to bring charges and in determining if a case is egregious.

J. *Multiple Unrelated Violations.* In cases involving multiple unrelated violations, OEE is more likely to seek a denial of export privileges and/or a greater monetary penalty than OEE would otherwise typically seek. For example, repeated unauthorized exports could warrant a denial order, even if a single export of the same item to the same destination under similar circumstances might warrant just a civil monetary penalty. OEE takes this approach because multiple violations may indicate serious compliance problems and a resulting greater risk of future violations. OEE may consider whether a Respondent has taken effective steps to address compliance concerns in determining whether multiple violations warrant a denial order in a particular case.

K. *Other Enforcement Action.* Other enforcement actions taken by federal, state, or local agencies against a Respondent for the apparent violation or similar apparent violations, including whether the settlement of alleged violations of BIS regulations is part of a comprehensive settlement with other federal, state, or local agencies. Where an administrative enforcement matter under the EAR involves conduct giving rise to related criminal or civil charges, OEE may take into account the related violations, and their resolution, in determining what administrative sanctions are appropriate under part 766 of the EAR. A criminal conviction indicates serious, willful misconduct and an accordingly high risk of future violations, absent effective administrative sanctions. However, entry of a guilty plea can be a sign that a Respondent accepts responsibility for complying with the EAR and will take greater care to do so in the future. In appropriate cases where a Respondent is receiving substantial criminal penalties, OEE may find that sufficient deterrence may be achieved by lesser administrative sanctions than would be appropriate in the absence of criminal penalties. Conversely, OEE might seek greater administrative sanctions in an otherwise similar case where a Respondent is not subjected to criminal penalties. The presence of a related criminal or civil disposition may distinguish settlements among civil penalty cases that appear otherwise to be similar. As a result, the factors set forth for consideration in civil penalty settlements will often be applied differently in the context of a "global settlement" of both civil and criminal cases, or multiple civil cases, and may therefore be of limited utility as precedent for future cases, particularly those not involving a global settlement.

L. *Future Compliance/Deterrence Effect: The impact an administrative enforcement action may have on promoting future compliance with the regulations by a Respondent and similar parties, particularly those in the same industry sector.*

M. *Other Factors That OEE Deems Relevant.* On a case-by-case basis, in determining the appropriate enforcement response and/or the amount of any civil monetary penalty, OEE will consider the totality of the circumstances to ensure that its enforcement response is proportionate to the nature of the violation.

IV. Civil Penalties

A. Determining What Sanctions Are Appropriate in a Settlement.

OEE will review the facts and circumstances surrounding an apparent violation and apply the Factors Affecting Administrative Sanctions in Section III above in determining the appropriate sanction or sanctions in an administrative case, including the appropriate amount of a civil monetary penalty where such a penalty is sought and imposed. Penalties for settlements reached after the initiation of litigation will usually be higher than those described by these guidelines.

B. Amount of Civil Penalty.

1. *Determining Whether a Case is Egregious.* In those cases in which a civil monetary penalty is considered appropriate, OEE will make a determination as to whether a case is deemed "egregious" for purposes of the base penalty calculation. If a case is determined to be egregious, OEE also will also determine the appropriate base penalty amount within the range of base penalty amounts prescribed in paragraphs IV.B.2.a.iii and iv below. These determinations will be based on an analysis of the applicable factors. In making these determinations, substantial weight will generally be given to Factors A ("willful or reckless violation of law"), B ("awareness of conduct at issue"), C ("harm to regulatory program objectives"), and D ("individual characteristics"), with particular emphasis on Factors A, B, and C. A case will be considered an "egregious case" where the analysis of the applicable factors, with a focus on Factors A, B, and C, indicates that the case represents a particularly serious violation of the law calling for a strong enforcement response. A determination by OEE that a case is "egregious" must have the concurrence of the Assistant Secretary of Commerce for Export Enforcement.

2. *Monetary Penalties in Egregious Cases and Non-Egregious Cases.* The civil monetary penalty amount shall generally be calculated as follows, except that neither the base penalty amount nor the penalty amount will exceed the applicable statutory maximum:

a. Base Category Calculation and Voluntary Self-Disclosures.

i. In a non-egregious case, if the apparent violation is disclosed through a voluntary self-disclosure, the base penalty amount shall be one-half of the transaction value, capped at a maximum base penalty amount of $125,000 per violation.

ii. In a non-egregious case, if the apparent violation comes to OEE's attention by means other than a voluntary self-disclosure, the base penalty amount shall be the "applicable schedule amount," as defined above (capped at a maximum base penalty amount of $250,000 per violation).

iii. In an egregious case, if the apparent violation is disclosed through a voluntary self-disclosure, the base penalty amount shall be an amount up to one-half of the statutory maximum penalty applicable to the violation.

iv. In an egregious case, if the apparent violation comes to OEE's attention by means other than a voluntary self-disclosure, the base penalty amount shall be an amount up to the statutory maximum penalty applicable to the violation.

The following matrix represents the base penalty amount of the civil monetary penalty for each category of violation:

BASE PENALTY MATRIX

Voluntary Self-Disclosure?	Egregious Case?	
	NO	YES
YES	(1) One-Half of the Transaction Value (capped at $125,000 per violation).	(3) Up to One-Half of the Applicable Statutory Maximum.
NO	(2) Applicable Schedule Amount (capped at $250,000 per violation).	(4) Up to the Applicable Statutory Maximum.

Note to paragraph IV.B.2. The dollar values that appear in IV.B.2.a.i and .ii, and in the Base Penalty Matrix may be adjusted in accordance with U.S. law, *e.g.*, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, sec. 701).

b. Adjustment for Applicable Relevant Factors.

In non-egregious cases the base penalty amount of the civil monetary penalty may be adjusted to reflect applicable Factors for Administrative Action set forth in Section III of these Guidelines. In egregious cases the base penalty amount of the civil monetary penalty will be set based on applicable Factors for Administrative Action set forth in Section III of these Guidelines. A Factor may result in a lower or higher penalty amount depending upon whether it is aggravating or mitigating or otherwise relevant to the circumstances at hand. Mitigating factors may be combined for a greater reduction in penalty, but mitigation will generally not exceed 75 percent of the base penalty, except in the case of VSDs, where full suspension is possible with conditions in certain non-egregious cases. Subject to this limitation, as a general matter, in those cases where the following Mitigating Factors are present, OEE will adjust the base penalty amount in the following manner:

In cases involving exceptional cooperation with OEE as set forth in Mitigating Factor G, but no voluntary self-disclosure as defined in § 764.5 of the EAR, the base penalty amount generally will be reduced between 25 and 40 percent. Exceptional cooperation in cases involving voluntary self-disclosure may also be considered as a further mitigating factor.

In cases involving a Respondent's first violation, the base penalty amount generally will be reduced by up to 25 percent. An apparent violation generally will be considered a "first violation" if the Respondent has not been convicted of an export-related criminal violation or been subject to a BIS final order in five years, preceding the date of the transaction giving rise to the apparent violation. A group of substantially similar apparent violations addressed in a single Charging Letter shall be considered as a single violation for purposes of this subsection. In those cases where a prior Charging Letter within the preceding five years involved conduct of a substantially different nature from the apparent violation at issue, OEE may consider the apparent violation at issue a "first violation." Warning Letters issued within the preceding five years are not factored into account for purposes of determining eligibility for "first offense" mitigation. When an acquiring firm takes reasonable steps to uncover, correct, and disclose or cause to be disclosed to OEE conduct that gave rise to violations by an acquired business before the acquisition, OEE typically will not take such violations into account as an aggravating factor in settling other violations by the acquiring firm.

iii. In cases involving charges pertaining to transactions where a license exception would have been available or a license would likely have been approved had one been sought as set forth in Mitigating Factor H, the base penalty amount generally will be reduced by up to 25 percent.

In all cases, the penalty amount will not exceed the applicable statutory maximum. Similarly, while mitigating factors may be combined for a greater reduction in penalty, mitigation will generally not exceed 75 percent of the base penalty, except in the case of VSDs, where full suspension is possible with conditions in certain non-egregious cases.

C. Settlement Procedures.

The procedures relating to the settlement of administrative enforcement cases are set forth in § 766.18 of the EAR.

Dated: June 15, 2016.

David W. Mills,

Assistant Secretary for Export Enforcement.

[FR Doc. 2016–14770 Filed 6–21–16; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239 and 249

[Release Nos. 33–10099; 34–78088; File No. S7–08–10]

Asset-Backed Securities Disclosure and Registration

AGENCY: Securities and Exchange Commission.

ACTION: Technical amendment.

SUMMARY: This release makes technical corrections to rules that were published in the **Federal Register** on September 24, 2014 (79 FR 57184). The Commission adopted revisions to Regulation AB and other rules governing the offering process, disclosure, and reporting for asset-backed securities. These technical amendments are being published to restore rule text that was inadvertently changed, revise outdated cross-references, and make other technical corrections.

DATES: Effective June 22, 2016.

FOR FURTHER INFORMATION CONTACT: Rolaine S. Bancroft, Senior Special Counsel, at (202) 551–3850; Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are making technical amendments to § 229.1100,[1] § 229.1104,[2] § 229.1105,[3] § 229.1115,[4] § 229.1125,[5] § 230.405,[6] § 230.456,[7] Form SF–3,[8] Form 8–K[9] and Form 10–D.[10]

List of Subjects

17 CFR Part 230

Advertising, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 229, 239 and 249

Reporting and recordkeeping requirements, Securities.

Text of Amendments

For the reasons set out above, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read in part as follows:

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[1] 17 CFR 229.1100.

[2] 17 CFR 229.1104.

[3] 17 CFR 229.1105.

[4] 17 CFR 229.1115.

[5] 17 CFR 229.1125.

[6] 17 CFR 230.405.

[7] 17 CFR 230.456.

[8] 17 CFR 239.45.

[9] 17 CFR 249.308.

[10] 17 CFR 249.312.

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78l, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78ll, 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309; and Sec. 84001, Pub. L. 114–94, 129 Stat. 1312.

* * * * *

§ 229.1100 [Amended]

■ 2. Amend § 229.1100 in paragraph (a) by removing "(§§ 229.1100 through 229.1123)" and adding in its place "(§§ 229.1100 through 229.1125)".

§ 229.1104 [Amended]

■ 3. Amend § 229.1104 in paragraph (e)(2) by adding "in response to Rule 15Ga–1" after "(as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934)".

§ 229.1105 [Amended]

■ 4. Amend § 229.1105 in paragraph (a)(3)(ii) by removing "135 days after" and adding in its place "135 days of".

§ 229.1115 [Amended]

■ 5. Amend § 229.1115 in Instruction 1 to Item 1115 by removing ", 3 and 5 to Item 1114" and adding in its place "and 4 to Item 1114(b)".

§ 229.1125 [Amended]

■ 6. Amend Appendix to § 229.1125—Schedule AL in Item 4(i) and Item 4(j) by removing all references to "loan" and adding in their place "lease"; and removing all references to "loans" and adding in their place "leases".

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 7. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78*o*, 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

§ 230.405 [Amended]

■ 8. Amend § 230.405 in paragraph (1)(i) of the definition of an *Ineligible issuer,* by removing the phrase "General Instruction I.A.4 of Form S–3" and adding in its place "General Instruction I.A.2 of Form SF–3"

§ 230.456 [Amended]

■ 9. Amend § 230.456 in paragraph (c)(3) by removing "post-effective amendment or".

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 10. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37, and Sec. 71003 and Sec. 84001, Pub. L. 114–94, 129 Stat. 1312, unless otherwise noted.

§ 239.45 [Amended]

■ 11. Amend Form SF–3 (referenced in § 239.45) in Note 2 of Notes to the "Calculation of Registration Fee" Table ("Fee Table") by removing "in a post-effective amendment to the registration statement or".

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 12. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 249.308 [Amended]

■ 13. Amend Form 8–K (referenced in § 249.308) by amending Item 6.05 to remove "Form S–3 (17 CFR 239.13)" and add in its place "Form SF–3 (17 CFR 239.45)".

§ 249.312 [Amended]

■ 14. Amend Form 10–D (referenced in § 249.312) by amending Item 1 in Part I:

■ a. to remove all references to the phrase "Item 1121(a) and (b)" and replacing them with the phrase "Item 1121(a), (b) and (c)"; and

■ b. to remove the phrase "17 CFR 229.1121(a) and (b)" and add in its place "17 CFR 1121(a), (b) and (c)".

Dated: June 16, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–14730 Filed 6–21–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. FDA–2014–N–1484]

Revisions to Exceptions Applicable to Certain Human Cells, Tissues, and Cellular and Tissue-Based Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or Agency or we) is issuing this final rule to amend certain regulations regarding donor eligibility, including the screening and testing of donors of particular human cells, tissues, and cellular and tissue-based products (HCT/Ps), and related labeling. This final rule is in response to our enhanced understanding in this area and in response to comments from stakeholders regarding the importance of embryos to individuals and couples seeking access to donated embryos.

DATES: This rule is effective August 22, 2016.

ADDRESSES: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the "Search" box and follow the prompts, and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jessica T. Walker, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

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I. Executive Summary

A. Purpose of the Final Rule

FDA is issuing this final rule to amend certain regulations regarding donor eligibility, including the screening and testing of donors of particular HCT/Ps, and related labeling. We are finalizing these changes in response to our enhanced understanding in this area and in response to comments from stakeholders regarding the importance of embryos to individuals and couples seeking access to donated embryos.

B. Summary of the Major Provisions of the Final Rule

FDA is amending existing regulations to provide additional flexibility to HCT/P establishments to make available for reproductive use embryos originally intended for reproductive use for a specific individual or couple when those embryos are subsequently intended for directed or anonymous donation. Specifically, this rulemaking redesignates the current Title 21 of the Code of Federal Regulations (CFR) 1271.90(b) (§ 1271.90(b)) to new § 1271.90(c), and would insert a new § 1271.90(b) entitled "Exceptions for reproductive use" to clarify that if an embryo was originally intended for reproductive use for a specific individual or couple, its use for directed or anonymous donation, would not be prohibited under § 1271.45(c), even when the applicable donor eligibility requirements under part 1271, subpart C, are not met. FDA also clarifies that we are not creating an exception for deficiencies that occurred in making the donor eligibility determination for either the oocyte donor or the semen donor as required under § 1271.45(b), or for deficiencies in performing donor screening or testing, as required under §§ 1271.75, 1271.80, and 1271.85.

The final rule also requires appropriate labeling for embryos that would describe the donor eligibility status of the individual donors whose gametes were used to form the embryo. The content of the labeling is not different from that required under current regulations. Consistent with current regulations, the intent of the labeling is to help ensure that physicians have specific and accurate information to provide to recipients for use in making informed medical decisions.

C. Legal Authority

FDA has authority for this rulemaking under section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264). Under section 361 of the PHS Act, FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable disease between the States or from foreign countries into the States.

D. Costs and Benefits

Because this rule imposes no additional regulatory burdens, the costs associated with this rule are expected to be minimal.

II. Background

A. Need for the Regulation/History of This Rulemaking

Under the authority of section 361 of the PHS Act, by delegation from the Surgeon General and the Secretary of Health and Human Services, FDA may make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases. Communicable diseases include, but are not limited to, those transmitted by viruses, bacteria, fungi, parasites, and transmissible spongiform encephalopathy agents. Certain diseases are transmissible through implantation, transplantation, infusion, or transfer of HCT/Ps derived from donors infected with those diseases. To prevent the introduction, transmission, or spread of such communicable diseases, we consider it necessary to require establishments to take appropriate measures to prevent the use of HCT/Ps from infected donors. FDA regulates HCT/Ps intended for implantation, transplantation, infusion, or transfer into a human recipient under part 1271 that was issued under the authority of section 361 of the PHS Act. Part 1271 requires HCT/P establishments to screen and test donors for relevant communicable disease agents and diseases, to prepare and follow written standard operating procedures for the prevention of the spread of communicable diseases, and to maintain records. Part 1271 also requires that for most HCT/Ps, the donor must be determined to be eligible, based on the results of screening and testing for relevant communicable disease agents and diseases. In most cases, a donor who tests reactive for a particular communicable disease, or who possesses clinical evidence of, or risk factors for, communicable disease agents and diseases, would be considered ineligible, and HCT/Ps from that donor would not ordinarily be used.

FDA has published three final rules that make up part 1271. In the **Federal Register** of January 19, 2001 (66 FR 5447), we published regulations requiring HCT/P establishments to register and list their HCT/Ps with FDA (registration final rule). In the **Federal Register** of May 25, 2004 (69 FR 29786), we published regulations requiring most donors to be tested and screened for relevant communicable disease agents and diseases (donor eligibility final rule). In the **Federal Register** of November 24, 2004 (69 FR 68612), we published regulations requiring certain HCT/P establishments to follow current good tissue practice (CGTP), which governs the methods used in, and the facilities and controls used for, the manufacture of HCT/Ps, recordkeeping, and the establishment of a quality program (CGTP final rule). These regulations apply to HCT/Ps recovered on or after May 25, 2005.

As part of our ongoing effort to implement our framework for regulating HCT/Ps, in the **Federal Register** of May 25, 2005 (70 FR 29949), we issued an interim final rule entitled "Human Cells, Tissues, and Cellular and Tissue-Based Products; Donor Screening and Testing, and Related Labeling" (2005 interim final rule), which had an effective date simultaneous with publication. This interim final rule was then adopted without change in the **Federal Register** of June 19, 2007 (72 FR 33667), in the final rule entitled "Human Cells, Tissues, and Cellular and Tissue-Based Products; Donor Screening and Testing, and Related Labeling" (2007 final rule). The 2007 final rule amended regulations regarding the screening and testing of donors of HCT/Ps, timing of specimen collection, record retention requirements, and related labeling requirements in response to public comments concerning the importance of cryopreserved embryos to individuals seeking access to donated embryos. The 2007 final rule also added an exception to the donor eligibility requirements in § 1271.90(a)(4) for cryopreserved embryos that, while originally exempt from the donor eligibility requirements because the donors were sexually intimate partners, are later intended for directed or anonymous donation.

In recent years, industry and the medical community have expressed concerns that the exception added by the 2007 final rule does not fully address the need for access to cryopreserved embryos. The stakeholders have raised concerns that the current regulations still unduly restrict the use of embryos that were originally intended for personal reproductive use, and therefore impose limitations on individuals and couples involved in family building. In response to these concerns, FDA published the proposed rule "Revisions to Exceptions Applicable to Certain Human Cells, Tissues, and Cellular and Tissue-Based Products" in the **Federal Register** of December 31, 2014 (79 FR 78744). The proposed rule intended to increase access to embryos for reproductive use by expanding the current exceptions to the prohibitions on use under § 1271.90, providing HCT/P establishments with the flexibility to make available any embryo originally formed for reproductive use for a specific individual or couple and now intended for reproductive use in a directed or anonymous donation, provided that specific criteria are met, including requirements for labeling.

B. Summary of Comments to the Proposed Rule

We received approximately 10 comment letters on the proposed rule by the close of the comment period. We received comments from academia, professional organizations, and individuals. The comments were balanced between those expressing support for the proposed rule and those raising concerns about how the proposed exception will impact public health. They addressed the following topics: Purpose and scope of the final rule, donor screening, exceptions from the requirement of determining donor eligibility, and labeling requirements.

C. General Overview of the Final Rule

FDA is adopting as final, without material change, the proposed rule to amend certain regulations regarding donor eligibility and related labeling.

We are making revisions to the following FDA regulations:

1. Amendments to § 1271.90

Section 1271.90 sets forth exceptions where HCT/P establishments are not required to make a donor eligibility determination under § 1271.50 or to perform donor screening or testing under §§ 1271.75, 1271.80, and 1271.85. We are adding language to the exceptions listed in this section to provide clarity and update the regulation by allowing for an embryo originally intended for reproductive use for a specific individual or couple, to be subsequently used for directed or anonymous donation, even when the donor eligibility requirements under part 1271, subpart C are not met.

We are amending § 1271.90 as follows:

- Changing the heading of this section by deleting "from the requirement of determining donor eligibility," and inserting "other" before "exceptions." The heading for § 1271.90 will read "Are there other exceptions and what labeling requirements apply?" We made this change for clarity; the new heading will be more accurate.
- Changing § 1271.90(a)(3) by replacing "exempt" with "excepted," which is the term used in the introductory title for this provision. Thus, this change will make the language more consistent. The beginning of § 1271.90(a)(3) will read, "Cryopreserved cells or tissue for reproductive use, other than embryos, originally excepted . . . ."
- Changing current § 1271.90(a)(4) by replacing "exempt" with "excepted".
- Redesignating current § 1271.90(b) as § 1271.90(c) and adding a new paragraph (b) to § 1271.90.
- Changing newly designated § 1271.90(c) by removing "paragraph (a)" and adding in its place "paragraphs (a) and (b)" in the introductory text, revising § 1271.90(c)(2) to replace "(b)(6)" with "(c)(6)", and by adding "recovery or" before "cryopreservation" in new § 1271.90(c)(6) to clarify that some testing and screening activities may take place before recovery of the gametes, not just before cryopreservation of the embryos.

2. Section 1271.90(b)

We are redesignating the current § 1271.90(b) to § 1271.90(c), and adding a new § 1271.90(b) entitled "Exceptions for reproductive use." Under finalized § 1271.90(b), an embryo originally intended for reproductive use for a specific individual or couple that is subsequently intended for directed or anonymous donation is excepted from the prohibition on use under § 1271.45(c) even when the applicable donor eligibility requirements under part 1271, subpart C are not met. Accordingly, when an establishment fails to comply with applicable donor eligibility requirements under part 1271, subpart C, the establishment will not be prohibited from making available for reproductive use such embryos for reproductive purposes in accordance with this section. The exception from the prohibition on use does not create an exception for deficiencies that occurred in making the donor eligibility determination for either the oocyte donor or the semen donor as required under § 1271.45(b), or for deficiencies in performing donor screening or testing, as required under §§ 1271.75, 1271.80, and 1271.85.

We note that the language we are adding to the exceptions currently listed in § 1271.90 is additive. It creates an additional exception for the use of certain reproductive HCT/Ps that are not currently excepted, but it does not impact or restrict the exceptions currently provided for in the regulations.

3. Section 1271.90(c)

Under § 1271.90(c), HCT/P establishments must prominently label an HCT/P described in § 1271.90(a) and (b). The labeling requirements are intended to help ensure that physicians have specific and accurate information to provide to recipients for use in making informed medical decisions.

The nonsubstantive change to § 1271.90(c)(2) clarifies that the labeling requirements contained in § 1271.90(c)(2) do not apply to reproductive cells or tissue labeled in accordance with § 1271.90(c)(6). The change to § 1271.90(c)(6) includes "recovery or" before the word "cryopreservation". Thus, the § 1271.90(c)(6) provision requires HCT/P establishments to prominently label an HCT/P described in § 1271.90(a)(3) or (a)(4) with "Advise recipient that screening and testing of the donor(s) were not performed at the time of recovery or cryopreservation of the reproductive cells or tissue, but have been performed subsequently" for HCT/Ps described in § 1271.90(a)(3) or (a)(4). This change is made to recognize that some testing and screening activities may take place even before recovery of HCT/Ps, not just before cryopreservation.

4. Amendment to § 1271.370

Section 1271.370 sets forth labeling requirements in addition to those that apply under §§ 1271.55, 1271.60, 1271.65, and 1271.90. Because, as discussed previously, this rule redesignates the current labeling requirements under § 1271.90(b) to § 1271.90(c), we are amending § 1271.370(b)(4) to revise the reference from § 1271.90(b) to § 1271.90(c).

III. Legal Authority

FDA is issuing this final rule under the authority of section 361 of the PHS Act (42 U.S.C. 264). Under section 361 of the PHS Act, FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable disease between the States or from foreign countries into the States. It is important to recognize that HCT/Ps recovered in one State may be sent to another for processing, and then shipped for use throughout the United States, or beyond. FDA has been involved in many recalls where HCT/Ps processed in a single establishment have been distributed in many States. In any event, intrastate transactions affecting interstate communicable disease transmission may also be regulated under section 361 of the PHS Act. (See *Louisiana* v. *Mathews,* 427 F. Supp. 174, 176 (E.D. La. 1977); *Independent Turtle Farmers of Louisiana, Inc.* v. *United States of America, et al.,* 2010 U.S. Dist. LEXIS 31117). This final rule incorporates changes in response to our enhanced understanding of the uses of certain types of HCT/Ps in specific situations and in response to comments from stakeholders regarding the importance of embryos to individuals and couples seeking access to donated embryos.

IV. Comments on the Proposed Rule and FDA Response

A. Introduction

We received approximately 10 comment letters on the proposed rule by the close of the comment period, each containing one or more comments on one or more issues. We received comments from academia, professional organizations, and individual consumers.

We describe and respond to the comments in sections IV.B through IV.F. We have numbered each comment to help distinguish among different comments. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which the comments were received.

B. Description of General Comments and FDA Response

Several comments made general remarks supporting the proposed rule without focusing on a particular proposed provision. In the following paragraphs, we discuss and respond to such general comments.

(Comment 1) There were several comments that were in support of the proposed rule and suggested that we provide even more guidance on donor eligibility, screening, and testing of donors of reproductive cells. One suggestion was that FDA's donor eligibility, screening, and testing requirements closely parallel American Society of Reproductive Medicine/Society for Assisted Reproductive Technology guidelines.

(Response) FDA acknowledges and appreciates the supportive comments. We appreciate the interest in additional guidance for the screening and testing of donors of reproductive cells. We continue to review existing regulations with respect to providing additional guidance or modifying these regulations as appropriate, in the future.

(Comment 2) One comment asked if the final rule would be applied retrospectively to embryos formed and cryopreserved on or after May 25, 2005.

(Response) Yes, the final rule applies to embryos formed and cryopreserved on or after May 25, 2005.

C. Purpose and Scope of the Final Rule (§ 1271.1)

(Comment 3) One comment noted that preventing the spread of communicable disease protects the population and the family receiving the donation. Two comments suggested that the proposed rule conflicts with FDA regulations that serve to prevent the introduction, transmission, and spread of communicable disease. One comment expressed concern that the proposed rule appears to relax the testing requirements for donors and conflicts with the PHS Act, specifically section 361, that provides FDA with the authority to make and enforce regulations "to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from State or possession into any other State or possession" (42 U.S.C. 264(a)). This commenter's interpretation of the proposed rule is that it removes the requirement for reproductive tissue donors to be tested, and only requires reproductive tissue donor testing "when possible." According to the comment, FDA seems to posit informed consent as an adequate response to the health risks faced by recipients of donated embryos. The commenter would like FDA to strike the qualifier "when possible" from the text of the proposed rule because the commenter believes this approach would provide a greater level of protection to the recipient than the proposed rule and preserve FDA's intention of relaxing the current donor eligibility regulations in the interest of family building.

(Response) As stated previously, we consider it necessary that establishments take appropriate measures to prevent the use of HCT/Ps from donors infected with communicable diseases. Part 1271 requires HCT/P establishments to screen and test donors for relevant communicable disease agents and diseases, and to maintain records. Part 1271 also requires for most HCT/Ps that the donor must be determined to be eligible, based on the results of screening and testing for relevant communicable disease agents and diseases. We have retained the qualifier "when possible" in § 1271.90(a)(4) to provide HCT/P establishments with the flexibility to make available any embryos originally formed for reproductive use for a specific individual or couple and now intended for reproductive use in a directed or anonymous donation, provided that specific criteria are met, including requirements for labeling.

The final rule provides for the continued applicability of labeling requirements for embryos intended for reproductive use that would be excepted from the prohibition on use. The rule requires prominent labeling that describes the donor eligibility status of the individual donors whose gametes were used to form the embryo. The required labeling will provide information to the treating physician to permit discussion of the potential risks of communicable disease with the recipient.

D. Donor Screening (§ 1271.75)

(Comment 4) Some of the comments expressed concern about the risk of accepting an unscreened donation. Another comment noted that eligibility of the HCT/P donor must be assessed prior to usage to ensure the safety of recipients, their offspring, and the public as a whole; and furthermore, ensuring the proper screening of the donor's HCT/P enables the control of the spread of disease.

(Response) We agree that the proper screening of HCT/P donors minimizes the risk of introducing, transmitting, or spreading communicable diseases. As stated in the proposed rule, we consider it necessary to require establishments to take appropriate measures to prevent the use of HCT/Ps from infected donors. Part 1271 requires HCT/P establishments to screen and test donors for relevant communicable disease agents and diseases, and to maintain records. Part 1271 also requires, for most HCT/Ps, that donor be determined to be eligible, based on the results of screening and testing for relevant communicable disease agents and diseases. In most cases, a donor who tests reactive for a particular communicable disease, or who possesses clinical evidence of, or risk factors for, a communicable disease agent and disease, would be considered ineligible, and cells or tissues from that donor would not ordinarily be used.

(Comment 5) A few comments expressed the belief that the proposed rule will allow for better genetic profiling. One of those comments stated that labeling will make it easier to identify particular genotypes for research. Another comment stated that genetically profiling all donors and to the extent possible all embryos will reduce the risk of recipients of embryos giving birth to children with serious genetic disorders. The commenter asked FDA to require establishments to genetically screen all donors and the embryo when possible.

(Response) These comments address a topic that is outside the scope of this rulemaking.

E. Exceptions From the Requirement of Determining Donor Eligibility (§ 1271.90)

(Comment 6) One comment sought transparency as to which embryos are excepted and requested specific examples of how the rule provides additional flexibility to make embryos available for directed and anonymous donation. Specifically, the commenter asked whether donation would be allowed when the embryo was originally intended for transfer to a sexually intimate partner, where one of the gamete providers (either a directed or anonymous donor) would be considered ineligible based on screening and testing.

(Response) The rulemaking provides additional flexibility to make embryos available when there have been changes in the original plans for use of the embryos. Under finalized § 1271.90(b), an embryo originally intended for reproductive use for a specific individual or couple that is subsequently intended for directed or anonymous donation is excepted from the prohibition on use under § 1271.45(c) even when the applicable donor eligibility requirements under part 1271, subpart C are not met. Accordingly, when an establishment fails to comply with applicable donor eligibility requirements under part 1271, subpart C, the establishment will not be prohibited from making available for reproductive use such embryos for reproductive purposes in accordance with this section. The exception from the prohibition on use does not create an exception for deficiencies that occurred in making the donor eligibility determination for either the oocyte donor or the semen donor as required under § 1271.45(b), or for deficiencies in performing donor screening or testing, as required under §§ 1271.75, 1271.80, and 1271.85.

We note that the change we are making to the exceptions currently listed in § 1271.90 is additive. It creates an additional exception for the use of certain reproductive HCT/Ps that are not currently excepted, but it does not impact or restrict the exceptions currently provided for in the regulations.

(Comment 7) One comment recommends that the term "embryos formed for autologous use" not be used in conjunction with embryos. The commenter reasons that after a sperm or oocyte form an embryo, the embryo should not be considered autologous, given the definition at § 1271.3(a).

(Response) We agree with the comment and are not adopting, as part of the final rule, the term "embryos formed for autologous use". Likewise, we are not adopting, as part of the final rule, the reference to § 1271.90(a)(1) in § 1271.90(a)(4).

F. Labeling Requirements (§ 1271.370)

(Comment 8) Several comments were in support of labeling because it allows the physician to fully discuss the risks of any communicable disease and it allows the patient to make a fully informed decision. One commenter noted that factors affecting decisions of an HCT/P recipient may outweigh the expert advice of medical doctors. Another comment referenced § 1271.90(c)(6) of the proposed rule (embryo labeling requirements) that states establishments are required to "advise recipients that screening and testing of the donor(s) were not performed at the time of recovery or cryopreservation of the reproductive cells or tissues, but have been performed subsequently." The comment further states that "Description of the Proposed Rule" provides that these labeling requirements are "based on the expectation that a physician will be closely involved in the decision of the embryo and the recognition that physicians are under legal and ethical obligations that require them to discuss the risks of communicable disease transmission stemming from the use of HCT/Ps." The comment asked that FDA revise the rule to expressly require establishments to counsel recipients on the risk of disease.

(Response) We agree that the recipients should be fully informed about the risk of communicable disease before accepting an embryo for implantation; however, we decline to make the suggested change. As stated in the preamble of the proposed rule, the proposed labeling requirements are based on the expectation that a physician will be closely involved in the decision to use an embryo and the recognition that physicians are under legal and ethical obligations that require them to discuss the risks of communicable disease transmission stemming from the use of HCT/Ps. FDA relies on physicians to meet these obligations when discussing procedures involving HCT/Ps with recipients. Further, we expect that a recipient would be fully informed of the risks involved in using an embryo for reproductive purposes as finalized under § 1271.90(b) even when the donor eligibility requirements under part 1271, subpart C are not met.

(Comment 9) One comment suggested that while a labeling requirement that is tiered according to the risks may mitigate the risks, it does not go far enough in abolishing the risks.

(Response) As described under proposed § 1271.90(c)(2) through (6), an embryo originally intended for reproductive use for a specific individual or couple that is subsequently intended for directed or anonymous donation must be labeled as applicable. We acknowledge that the labeling requirement will not abolish all risks of implanting those embryos. Rather, as stated in the proposed rule, the required labeling would provide information to the treating physician to permit discussion of the potential risks of communicable diseases with the recipient. Our expectation is that the recipient will become fully informed of the risk when the donor eligibility requirements under part 1271, subpart C are not met, so that the recipient can make a well informed decision about receiving the embryo.

V. Effective Date

This rule is effective August 22, 2016.

VI. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the costs associated with this rule are expected to be minimal, we certify that the rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

This rule amends certain regulations regarding donor eligibility and labeling related to the screening and testing of donors of particular HCT/Ps. The final rule will provide additional flexibility to HCT/P establishments to make available for reproductive use embryos originally intended for reproductive use for a specific individual or couple and subsequently intended for directed or anonymous donation. Specifically, the final rule will clarify that if an embryo was originally intended for reproductive use for a specific individual or couple, its use for directed or anonymous donation would not be prohibited under § 1271.45 (c), even when the applicable donor eligibility requirements under part 1271, subpart C are not met. This exception from prohibition for use would not create an exception for deficiencies that occurred in making the donor eligibility determination for either the oocyte donor or the semen donor as required under § 1271.45(b), or for deficiencies in performing donor screening or testing, as required under §§ 1271.75, 1271.80, and 1271,85. The final rule also requires appropriate labeling that describes the donor eligibility status of the individual donors whose gametes were used to form the embryo.

This rule will provide greater accommodation of individuals and couples wanting access to embryos originally intended for reproductive use for a specific individual or couple, while continuing to emphasize the applicability of the donor eligibility screening and testing requirements for individual gamete donors. The final rule will provide HCT/P establishments with the flexibility to make embryos originally intended for reproductive use for a specific individual or couple now available for directed or anonymous donation, provided that specific criteria are met. Consistent with current regulations, the labeling requirements will help ensure that physicians have specific and accurate information to provide to recipients for use in making informed medical decisions. Because this rule imposes no additional regulatory burdens, the costs associated with this rule are expected to be minimal.

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

The labeling requirements contained in this final rule are not subject to review by the Office of Management and Budget (OMB) because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C 3501–3520). Rather, the requirement to label HCT/Ps in accordance with the final rule is a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)). Therefore, FDA concludes that these requirements in this document are not subject to review by OMB because they do not constitute a "collection of information" under the PRA.

IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 1271

Biologics, Drugs, Human cells and tissue-based products, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1271 is amended as follows:

PART 1271—HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE–BASED PRODUCTS

■ 1. The authority citation for part 1271 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 263a, 264, 271.

■ 2. In § 1271.90:
■ a. Revise the heading;
■ b. Revise paragraph (a)(3) introductory text;
■ c. Revise paragraph (a)(4);
■ d. Redesignate paragraph (b) as paragraph (c);
■ e. Add a new paragraph (b);
■ f. Revise newly designated paragraph (c) introductory text;
■ g. Revise newly designated paragraph (c)(2); and
■ h. Revise newly designated paragraph (c)(6).

The revisions and additions read as follows:

§ 1271.90 Are there other exceptions and what labeling requirements apply?

(a) * * *

(3) Cryopreserved cells or tissue for reproductive use, other than embryos, originally excepted under paragraphs (a)(1) or (a)(2) of this section at the time of donation, that are subsequently intended for directed donation, provided that:

* * * * *

(4) A cryopreserved embryo, originally excepted under paragraph (a)(2) of this section at the time of recovery or cryopreservation, that is subsequently intended for directed or anonymous donation. When possible, appropriate measures should be taken to screen and test the semen and oocyte donors before transfer of the embryo to the recipient.

(b) *Exceptions for reproductive use.* An embryo originally intended for reproductive use for a specific individual or couple that is subsequently intended for directed or anonymous donation for reproductive use is excepted from the prohibition on use under § 1271.45(c) even when the applicable donor eligibility requirements under subpart C of this part are not met. Nothing in this paragraph creates an exception for deficiencies that occurred in making the donor eligibility determination for either the oocyte donor or the semen donor as required under § 1271.45(b), or for deficiencies in performing donor screening or testing, as required under §§ 1271.75, 1271.80, and 1271.85.

(c) *Required labeling.* As applicable, you must prominently label an HCT/P described in paragraphs (a) and (b) of this section as follows:

* * * * *

(2) "NOT EVALUATED FOR INFECTIOUS SUBSTANCES," unless you have performed all otherwise applicable screening and testing under §§ 1271.75, 1271.80, and 1271.85. This paragraph does not apply to reproductive cells or tissue labeled in accordance with paragraph (c)(6) of this section.

* * * * *

(6) "Advise recipient that screening and testing of the donor(s) were not performed at the time of recovery or cryopreservation of the reproductive cells or tissue, but have been performed subsequently," for paragraphs (a)(3) or (a)(4) of this section.

§ 1271.370

■ 3. Amend § 1271.370(b)(4) by removing "§ 1271.90(b)" and by adding in its place "§ 1271.90(c)".

Dated: June 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14721 Filed 6–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9772]

RIN 1545–BN15

Modification of Treatment of Certain Health Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance to Blue Cross and Blue Shield organizations, and certain other organizations, on computing and applying the medical loss ratio and the consequences for not meeting the medical loss ratio threshold. The final regulations reflect the enactment of a technical correction to section 833(c)(5) of the Internal Revenue Code by the Consolidated and Further Continuing Appropriations Act of 2015. The final regulations affect Blue Cross and Blue Shield organizations, and certain other organizations involved in providing health insurance.

DATES: *Effective Date:* These regulations are effective on June 22, 2016.

Applicability Date: For the date of applicability, see § 1.833–1(e).

FOR FUTHER INFORMATION CONTACT: Rebecca L. Baxter, at (202) 317–6995 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This Treasury decision contains final regulations that amend 26 CFR part 1 under section 833 of the Internal Revenue Code (the Code). Section 833(a) provides that Blue Cross and Blue Shield organizations, and certain other organizations involved in providing health insurance as described in section 833(c), are entitled to: (1) Treatment as stock insurance companies for purposes of sections 831 through 835 (related to taxation of non-life insurance companies generally); (2) a special deduction determined under section 833(b); and (3) computation of unearned premium reserves under section 832(b)(4) based on 100 percent, and not 80 percent, of unearned premiums for purposes of determining "insurance company taxable income" under section 832.

Section 833(c)(5) was added to the Code by section 9016 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, 124 Stat. 119) (the Affordable Care Act), effective for taxable years beginning after December 31, 2009. Section 833(c)(5), as enacted by the Affordable Care Act, provided that section 833 did not apply to any organization unless the organization's medical loss ratio (MLR) for the taxable year was at least 85 percent. For purposes of section 833, an organization's MLR was its percentage of total premium revenue expended on reimbursement for clinical services provided to enrollees under its policies during such taxable year (as reported under section 2718 of the Public Health Service Act (42 U.S.C. 300gg–18)).

Section 2718 of the Public Health Service Act (PHSA) was added by section 1001 and amended by section 10101 of the Affordable Care Act. Section 2718 of the PHSA is administered by the Department of Health and Human Services. Section 2718(a) of the PHSA requires a health insurance issuer to submit a report for each plan year to the Secretary of the Department of Health and Human Services concerning the percentage of total premium revenue, after accounting for collections or receipts for risk adjustment and risk corridors and payments of reinsurance, that the issuer expends: (1) On reimbursement for clinical services provided to enrollees under such coverage; (2) for activities that improve health care quality; and (3) on all other non-claims costs, excluding federal and state taxes and licensing or regulatory fees.

Section 2718(b) of the PHSA requires that a health insurance issuer offering group or individual health insurance coverage, with respect to each plan year, provide an annual rebate to each enrollee under such coverage, on a pro rata basis, if the ratio of the amount of the premium revenue the issuer expends on costs for reimbursement for clinical services provided to enrollees under such coverage and for activities that improve health care quality to the total amount of premium revenue (excluding federal and state taxes and licensing or regulatory fees and after accounting for payments or receipts for risk adjustment, risk corridors, and reinsurance under sections 1341, 1342, and 1343 of the Affordable Care Act (42 U.S.C. 18061, 18062, and 18063)) for the plan year is less than a prescribed percentage. Section 2718(b)(1)(B)(ii) of the PHSA provides that beginning on January 1, 2014, the medical loss ratio computed under section 2718(b) of the PHSA shall be based on expenses and premium revenues for each of the previous three years of the plan.

The Department of Health and Human Services published in the **Federal Register** (75 FR 74864) an interim final rule under section 2718 of the PHSA on December 1, 2010, an interim final rule and final rule on December 7, 2011 (76 FR 76596 and 76574), and a final rule on May 16, 2012 (77 FR 28790). These rules implementing section 2718 of the PHSA are codified at 45 CFR part 158 (HHS Regulations).

On December 6, 2010, the Treasury Department and the IRS published Notice 2010–79 (2010–49 I.R.B. 809), which provided interim guidance and transitional relief to organizations under section 833(c)(5). The interim guidance applied to an organization's first taxable year beginning after December 31, 2009.

The interim guidance provided that for purposes of determining whether an organization's percentage of total premium revenue expended on reimbursement for clinical services provided to enrollees was at least 85 percent (and thus satisfied the requirement of section 833(c)(5)), organizations were required to use the definition of "reimbursement for clinical services provided to enrollees" set forth in the HHS Regulations. In addition, the interim guidance provided that for purposes of determining whether the 85-percent requirement of section 833(c)(5) was satisfied, the IRS would not challenge the inclusion of amounts expended for "activities that improve health care quality" as described in the HHS Regulations.

Notice 2010–79 also stated that the consequences for an organization with an MLR of less than 85 percent (an insufficient MLR) were as follows: (1) The organization would not be taxable as a stock insurance company by reason of section 833(a)(1) (but may have been taxable as an insurance company if it otherwise met the requirements of section 831(c)); (2) the organization would not be allowed the special deduction set forth in section 833(b); and (3) the organization would only take into account 80 percent, rather than 100 percent, of its unearned premiums for purposes of computing premiums earned on insurance contracts under section 832(b)(4). However, Notice 2010–79 provided that solely for the first taxable year beginning after December 31, 2009, the IRS would not treat an organization as losing its status as a stock insurance company by reason of section 833(c)(5) provided the following conditions were met: (1) The organization was described in section 833(c) in the immediately preceding taxable year; (2) the organization would have been taxed as a stock insurance company for the current taxable year but for the enactment of section 833(c)(5); and (3) the organization would have met the requirements of section 831(c) to be taxed as an insurance company for the current taxable year but for its activities in the administration, adjustment, or settlement of claims under cost-plus or administrative services-only contracts.

On July 5, 2011, the Treasury Department and the IRS published Notice 2011–51 (2011–27 I.R.B. 36) extending the interim guidance and transitional relief provided in Notice 2010–79 to an organization's first taxable year beginning after December 31, 2010. On June 11, 2012, the Treasury Department and the IRS published Notice 2012–37 (2012–24 I.R.B. 1014) extending the interim guidance and transitional relief provided in Notice 2010–79 and Notice 2011–51 through an organization's first taxable year beginning after December 31, 2012.

On May 13, 2013, the Treasury Department and the IRS published in the **Federal Register** (78 FR 27873) a notice of proposed rulemaking (REG–126633–12) addressing the computation of an organization's MLR for purposes of section 833(c)(5) and the consequences of non-application of section 833 if an organization had an insufficient MLR. The proposed regulations provided that the numerator of an organization's MLR is the total premium revenue expended on "reimbursement for clinical services provided to enrollees" under its policies for the taxable year, but does not include amounts expended for "activities that improve health care quality." In addition, the Treasury Department and the IRS concluded that, for administrative convenience and to be consistent with the MLR calculation under section 2718(b)(1)(B)(ii) of the PHSA, it was appropriate to compute the MLR for a taxable year under section 833(c)(5) using the same three-year period used under section 2718(b) of the PHSA. Therefore, the proposed regulations provided that amounts used for purposes of section 833(c)(5) for each taxable year should be determined based upon amounts reported under section 2718 of the PHSA for that taxable year and the two preceding taxable years, subject to the same adjustments that apply for purposes of the PHSA. The proposed regulations also provided that if an organization has an insufficient MLR, then section 833(a) does not apply to that organization.

On January 7, 2014, the Treasury Department and the IRS published in the **Federal Register** (79 FR 755) final regulations (TD 9651) adopting the provisions of the proposed regulations with certain modifications. These modifications included transition rules to phase in the same three-year period used under section 2718(b) of the PHSA to compute the MLR for a taxable year. Accordingly, the final regulations provide that for the first taxable year beginning after December 31, 2013, an organization's MLR is computed on a one-year basis. For the first taxable year beginning after December 31, 2014, an organization's MLR is computed on a two-year basis. Finally, for the first taxable year beginning after December 31, 2015, and for all succeeding taxable years, the final regulations provide that an organization's MLR is determined based on amounts reported under section 2718 of the PHSA for that taxable year and the two preceding taxable years, subject to the same adjustments that apply for purposes of section 2718 of the PHSA. The final regulations apply to taxable years beginning after December 31, 2013.

Congress subsequently passed the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, 128 Stat. 2130) (the Appropriations Act), which was signed into law by the President on December 16, 2014. Section 102 of Division N of the Appropriations Act made a technical correction to section 833(c)(5) (the Technical Correction). The Technical Correction provides that in calculating its MLR numerator, an organization includes both the cost of reimbursement for clinical services and amounts expended for activities that improve health care quality. In addition, the Technical Correction provides that the consequences for not meeting the MLR threshold are only that section 833(a)(2) and (3) do not apply. Therefore, an organization with an insufficient MLR is treated as if it were a stock insurance company under section 833(a)(1). The Technical Correction applies to taxable years beginning after December 31, 2009.

Explanation of Provisions

These final regulations restate § 1.833–1 of the Income Tax Regulations (26 CFR part 1) and incorporate the Technical Correction. As explained in this preamble, the Technical Correction, in effect, retroactively amended the rules in the existing final regulations to determine the MLR and the consequences of an insufficient MLR. In order to avoid any confusion caused by the effect of the Technical Correction on the existing final regulations, the Treasury Department and the IRS are publishing the existing final regulations, as revised by the Technical Correction, in their entirety in this Treasury decision.

1. Determining the MLR

Section 1.833–1 of the Income Tax Regulations generally provides that an organization's MLR with respect to a taxable year is the ratio, expressed as a percentage, of the organization's MLR numerator to its MLR denominator. Prior to the Technical Correction, the existing final regulations only included in the MLR numerator an organization's total premium revenue expended on reimbursement for clinical services provided to enrollees. Consistent with the Technical Correction, § 1.833–1(c)(1)(i) of these final regulations describes an organization's MLR numerator as the total premium revenue the organization expended on reimbursement for clinical services and activities that improve health care quality provided to enrollees under its policies for the taxable year. For purposes of section 833(c)(5), these final regulations define the term "activities that improve health care quality" to have the same meaning as the term has in section 2718 of the PHSA and the regulations issued under that section (see 45 CFR 158.150). In addition, consistent with the Technical Correction, the transition rules for computation of the MLR in § 1.833–1(c)(2)(i) and (ii) of these final regulations include the premium revenue expended on activities that improve health care quality.

2. Consequences of an Insufficient MLR

Consistent with the Technical Correction, these final regulations provide that the consequences for an organization described in section 833(c) that has an MLR of less than 85 percent are the following: (1) The organization is not allowed the special deduction set forth in section 833(b); and (2) it must take into account 80 percent, rather than 100 percent, of its unearned premiums under section 832(b)(4). Unlike under the rule in the existing final regulations, an organization that has an MLR of less than 85 percent does not lose its eligibility to be treated as a stock insurance company under section 833(a)(1).

Effective/Applicability Date

These final regulations apply to taxable years beginning after December 31, 2016. However, taxpayers may rely on these final regulations for taxable years beginning after December 31, 2009.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirement of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

The Treasury Department and the IRS have determined that section 553(b) of the APA does not apply to these regulations, including because good cause exists under section 553(b)(B) of the APA. Section 553(b)(B) provides that an agency is not required to publish a notice of proposed rulemaking in the **Federal Register** when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. The Treasury Department and the IRS have determined that notice and public comment are unnecessary inasmuch as these revisions (1) merely incorporate the Technical Correction by adding or removing language in the existing final regulations and make nonsubstantive conforming changes to reflect the Technical Correction and (2) provide taxpayers with immediate guidance. For the same reason, a delayed effective date is not required pursuant to section 553(d)(3) of the APA. Pursuant to section 7805(f)(3) of the Code, these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses, and no comments were received.

Drafting Information

The principal author of these regulations is Rebecca L. Baxter, Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the Treasury Department and the IRS participated in their development.

Availability of IRS Documents

The IRS notices and Treasury decisions cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.833–1 is revised to read as follows:

§ 1.833–1 Medical loss ratio under section 833(c)(5).

(a) *In general.* Section 833(a)(2) and (3) do not apply to an organization unless the organization's medical loss ratio (MLR) for a taxable year is at least 85 percent. Paragraph (b) of this section provides definitions that apply for purposes of section 833(c)(5) and this section. Paragraph (c) of this section provides rules for computing an organization's MLR under section 833(c)(5). Paragraph (d) of this section addresses the treatment under section 833 of an organization that has an MLR of less than 85 percent. Paragraph (e) of this section provides the effective/applicability date.

(b) *Definitions.* The following definitions apply for purposes of section 833(c)(5) and this section.

(1) *Activities that improve health care quality.* The term *activities that improve health care quality* has the same meaning as that term has in section 300gg–18 of title 42, United States Code and the regulations issued under that section (see 45 CFR 158.150).

(2) *Reimbursement for clinical services.* The term *reimbursement for clinical services* has the same meaning as that term has in section 300gg–18 of title 42, United States Code and the regulations issued under that section (see 45 CFR 158.140).

(3) *Total premium revenue.* The term *total premium revenue* means the total amount of premium revenue (excluding federal and state taxes and licensing or regulatory fees and after accounting for payments or receipts for risk adjustment, risk corridors, and reinsurance under sections 1341, 1342, and 1343 of the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)) (42 U.S.C. 18061, 18062, and 18063)) as those terms are used for purposes of section 300gg 18(b) of title 42, United States Code and the regulations issued under that section (see 45 CFR part 158).

(c) *Computation of MLR under section 833(c)(5)*—(1) *In general.* Starting with the first taxable year beginning after December 31, 2015, and for all succeeding taxable years, an organization's MLR with respect to a taxable year is the ratio, expressed as a percentage, of the MLR numerator, as described in paragraph (c)(1)(i) of this section, to the MLR denominator, as described in paragraph (c)(1)(ii) of this section.

(i) *MLR numerator.* The numerator of an organization's MLR is the total premium revenue expended on reimbursement for clinical services and activities that improve health care quality provided to enrollees under its policies for the taxable year, computed using a three-year period in the same manner as those expenses are computed for the plan year for purposes of section 300gg–18(b) of title 42, United States Code and regulations issued under that section (see 45 CFR part 158).

(ii) *MLR denominator.* The denominator of an organization's MLR is the organization's total premium revenue for the taxable year, computed using a three-year period in the same manner as the total premium revenue is computed for the plan year for purposes of section 300gg–18(b) of title 42, United States Code and regulations issued under that section (see 45 CFR part 158).

(2) *Transition rules.* The transition rules in paragraphs (c)(2)(i) and (ii) of this section apply solely for the first taxable year beginning after December 31, 2013, and the first taxable year beginning after December 31, 2014.

(i) *First taxable year beginning after December 31, 2013.* For the first taxable year beginning after December 31, 2013, the numerator of an organization's MLR is the total premium revenue expended on reimbursement for clinical services and activities that improve health care quality provided to enrollees under its policies for the first taxable year beginning after December 31, 2013, and the denominator of an organization's MLR is the organization's total premium revenue for the first taxable year beginning after December 31, 2013.

(ii) *First taxable year beginning after December 31, 2014.* For the first taxable year beginning after December 31, 2014, the numerator of an organization's MLR is the sum of the total premium revenue expended on reimbursement for clinical services and activities that improve health care quality provided to enrollees under its policies for the first taxable year beginning after December 31, 2013, and for the first taxable year beginning after December 31, 2014, and the denominator of an organization's MLR is the sum of the organization's total premium revenue for the first taxable year beginning after December 31, 2013, and for the first taxable year beginning after December 31, 2014.

(d) *Failure to qualify under section 833(c)(5)*—(1) *In general.* If, for any taxable year, an organization's MLR is less than 85 percent, then beginning in that taxable year and for each subsequent taxable year for which the organization's MLR remains less than 85 percent, paragraphs (d)(1)(i) and (ii) of this section apply.

(i) *Special deduction.* The organization is not allowed the special deduction set forth in section 833(b).

(ii) *Premiums earned.* The organization must take into account 80 percent, rather than 100 percent, of its unearned premiums under section 832(b)(4) as it applies to other non-life insurance companies.

(2) *No material change.* An organization's loss of eligibility for the treatment provided by sections 833(a)(2) and (3) solely by reason of section 833(c)(5) will not be treated as a material change in the operations of such organization or in its structure for purposes of section 833(c)(2)(C).

(e) *Effective/applicability date.* This section applies to taxable years beginning after December 31, 2016. However, taxpayers may rely on this section for taxable years beginning after December 31, 2009.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: May 18, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–14784 Filed 6–21–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0460]

RIN 1625–AA00

Safety Zone; Detroit River Days Air Show, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Detroit River in the vicinity of Detroit, MI. This zone is intended to restrict and control movement of vessels in a portion of the Detroit River. This zone is necessary to protect spectators and vessels from potential hazards associated with the Detroit River Days Air Show.

DATES: This temporary final rule is effective from 12:30 p.m. on June 24, 2016 until 6:30 p.m. on June 26, 2016.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2016–0460 and are available online by going to *www.regulations.gov,* type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Petty Officer Todd Manow, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9508, email *Todd.M.Manow@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
NAD 83	North American Datum of 1983
NPRM	Notice of Proposed Rulemaking
U.S.C.	United States Code

II. Background Information and Regulatory History

On February 10, 2016, the Tuskegee Airmen National Historical Museum submitted an application for a marine event for an aerial display spanning three days in conjunction with the Detroit River Days Festival on June 24, 25, and 26, 2016. A safety zone is required by the Federal Aviation Administration to separate aircraft from persons and property on the ground or water's surface for all air shows. For the purposes of this event, the Coast Guard is establishing a safety zone around the proposed flight path and a standoff zone between the flight path and the shore, matching the safety zone created for this same event in 2015 [USCG–2015–0491].

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231, 33 CFR 1.05–1 and 160.5; and Department of Homeland Security Delegation No. 0170.1. Having reviewed the application for a marine event submitted by the sponsor on February 10, 2016, the Captain of the Port Detroit (COTP) has determined that an aircraft aerial display proximate to a gathering of watercraft poses a significant risk to public safety and property. Such hazards include potential aircraft malfunctions, loud noise levels, and waterway distractions. Therefore, the COTP is establishing a safety zone around the event location to help minimize risks to safety of life and property during this event.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because waiting for a notice and comment period to run would be impracticable, unnecessary, and contrary to the public interest. Although an initial marine event application was submitted on February 10, 2016, final details regarding event area and patrol parameters were not known to the Coast Guard with sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, delaying the effective date of this rule to wait for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with this air show.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

IV. Discussion of the Rule

This rule establishes a safety zone on U.S. waters of the Detroit River, Detroit, MI, from a point on shore in Milliken State Park at 42°19.87′ N., 083°01.65′ W., proceeding South-Southeast approximately 450 yards to a point mid-river corresponding with the international boundary at 42°19.67′ N., 083°01.57′ W., then proceeding approximately 1.3 miles West-Southwest along the international boundary to a point mid-river at 42°19.28′ N., 083°03.03′ W. and then proceeding to a point on shore just west of the Joe Lewis Arena at 42°19.45′ N., 083°03.17′ W., and then following the U.S. bank of the Detroit River upstream to the point of origin (NAD 83).

Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or his on-scene representative on a case-by-case basis. The COTP or his on-scene representative may be contacted via VHF Channel 16 to coordinate vessel transits during the enforcement period.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.) related to rulemaking. Below we summarize our analyses based these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866 or under section 1 of E.O. 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short duration, and is designed to minimize the impact on navigation. Moreover, under certain conditions, vessels may still transit through the safety zone when permitted by the COTP on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in portions of the Detroit River from 12:30 p.m. to 6:30 p.m. on June 24, 25 and 26, 2016.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of these zones, Coast Guard Sector Detroit will issue a local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above. The Coast Guard will not retaliate against entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Tribal Implications

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and is therefore categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

H. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

K. Energy Effects

This action is not a "significant energy action" under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0460 to read as follows:

§ 165.T09–0460 Safety Zone; Detroit River Days Air Show, Detroit River, Detroit, MI.

(a) *Location.* The following area is a temporary safety zone: All U.S. waters of the Detroit River, Detroit, MI from a point on shore in Milliken State Park at 42°19.87′ N., 083°01.65′ W., proceeding South-Southeast approximately 450 yards to a point mid-river on the international boundary at 42°19.67′ N., 083°01.57′ N., then proceeding approximately 1.3 miles West-Southwest along the international boundary to a point mid-river at 42°19.28′ N., 083°03.03′ W., and then proceeding to a point on shore immediately West of the Joe Lewis arena at 42°19.45′ N., 083°03.17′ N., and then following the U.S. bank of the Detroit River upstream to the point of origin (NAD 83).

(b) *Enforcement periods.* The safety zone described in paragraph (a) of this section will be enforced from 12:30 p.m. until 6:30 p.m. on June 24, 25, and 26, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit (COTP) or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or his on-scene representative on a case-by-case basis.

(3) The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the COTP to act on his behalf.

(4) Vessel operators must contact the COTP or his on-scene representative to obtain permission to enter or operate within the safety zone. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313–568–9560. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or his on-scene representative.

Dated: June 14, 2016.

Scott B. Lemasters,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2016–14817 Filed 6–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 36 and 42

RIN 2900–AP78

Federal Civil Penalties Adjustment Act Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Federal Civil Monetary Penalties Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, sets forth a formula increasing the maximum statutory amounts for civil monetary penalties and requires federal agencies to give notice of the new maximum amounts by regulation. Accordingly, this document gives notice that the Department of Veterans Affairs (VA) is increasing maximum civil monetary penalties from $10,000 to $21,563 for false loan guaranty certifications and from $5,500 to $10,781 for fraudulent claims or fraudulent statements in any VA program.

DATES: *Effective Date:* This interim final rule is effective June 22, 2016.

Comment Date: Comments must be received on or before August 22, 2016.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AP78, Federal Civil Penalties Adjustment Act Amendments." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bill Russo, Director, Office of Regulations

Management, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 386–6406.

SUPPLEMENTARY INFORMATION: On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Sec. 701 of Pub. L. 114–74), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) (Pub. L. 101–410), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

The 2015 Act requires agencies to: (1) Adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final rulemaking (IFR); and (2) make subsequent annual adjustments for inflation. Catch-up adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year of the previous adjustment, and the October 2015 CPI–U. Annual inflation adjustments are to be based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U.

The Executive Office of the President Office of Management and Budget (OMB) published guidance on February 24, 2016, advising the heads of federal agencies how to implement the 2015 Act. See *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf*. In the guidance, OMB provided the applicable multipliers that federal agencies should use when calculating their first adjustment. Agencies may not increase penalty levels by more than 150 percent of the corresponding levels in effect on November 2, 2015. Note: The 150 percent limitation is on the amount of the increase; therefore, the adjusted penalty level(s) are up to 250 percent of the level(s) in effect on November 2, 2015.

Civil Monetary Penalties in the Home Loan Guaranty Program

The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 authorized VA to levy civil monetary penalties against lenders that make false certifications in VA's home loan guaranty program. Public Law 99–576, sec. 402, Oct. 28, 1986, codified at 38 U.S.C. 3710(g)(4). Any lender that knowingly and willfully makes a false certification related to VA's credit information and loan processing standards is liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater. See 38 CFR 36.4340(k). The applicable multiplier for a law enacted in 1986 is 2.15628. Therefore, this rule increases the civil penalty found at 38 CFR 36.4340(k)(1)(i) and 36.4340(k)(3) to the greater of two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $21,563.

Program Fraud Civil Remedies

The Program Fraud Civil Remedies Act of 1986 authorized federal agencies to establish civil penalties and assessments against persons who commit fraud in federal programs. See Public Law 99–509, secs. 6101–6104, Oct. 21, 1986. For participants in VA's programs, a person is subject to a civil penalty (in addition to any other remedy that may be prescribed by law) for making a fraudulent claim or statement, as described in 38 CFR 42.3..

The Program Fraud Civil Remedies Act of 1986 originally established the amount of the civil penalty at $5,000. See Public Law 99–509, secs. 6101–6104, Oct. 21, 1986. VA increased the amount to $5,500 in 1990, in accordance with the Inflation Adjustment Act. VA has not changed the amount other than when it implemented the adjustment due to the Inflation Adjustment Act.

As stated above, OMB has advised that the applicable multiplier for laws enacted in 1986 is 2.15628. Rather than applying the multiplier to $5,500, however, VA is applying the multiplier to the amount originally established in the Program Fraud Civil Remedies Act of 1986, $5,000. The initial adjustment from $5,000 to $5,500 is not to be taken into account. This is because, under the 2015 Act, agencies are to exclude from the catch-up prior inflationary adjustments implemented under the Inflation Adjustment Act. Therefore, as of the effective date of this rule, the amounts found at 38 CFR 42.3(a)(1) and 38 CFR 42.3(b)(1) are amended from $5,500 to $10,781.

Updating Authority Section, 38 CFR Part 42

VA is also updating the language to account for the codification of the authority cited by 38 U.S.C. Ch. I, Pt. 41, Refs & Annos. Currently, the language states that the cited authorities are ". . . to be codified at 31 U.S.C. 3801–3812." The authorities are now codified at 31 U.S.C. 3801–3812. Consequently, VA is removing "to be codified" and replacing it with "codified".

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs finds, with good cause, that notice and public procedure thereon are unnecessary. This interim final rule merely calculates the adjustment percentages, specified by the 2015 Act, for codification as a VA regulation.

This final rule does not impose any additional responsibilities on any entity and therefore requires no adjustment to any entity's current operations, policies, or practices. Instead, it simply adjusts the amount of each civil monetary penalty as prescribed by the 2015 Act.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," which requires review by OMB, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined that it is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Accordingly, no proposed rulemaking was required in connection with the adoption of this final rule. Pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing—Guaranteed and Insured Loans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Chief of Staff, Department of Veterans Affairs, approved this document on May 31, 2016, for publication.

Dated: June 16, 2016.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs-housing and community development, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

For the reasons set out in the preamble, VA amends 38 CFR parts 36 and 42 as follows:

PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and as otherwise noted.

■ 2. In § 36.4340, amend paragraphs (k)(1)(i) and (k)(3) by removing "$10,000" and adding, in its place, "$21,563" and by revising the authority citation at the end of the section to read as follows:

§ 36.4340 Underwriting standards, processing procedures, lender responsibility, and lender certification.

* * * * *

(Authority: 28 U.S.C. 2461; 38 U.S.C. 3710)

PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT

■ 3. The authority citation for part 42 is revised to read as follows:

Authority: Pub. L. 99–509, secs. 6101–6104, 100 Stat. 1874, codified at 31 U.S.C. 3801–3812.

■ 4. In § 42.3, amend paragraphs (a)(1) and (b)(1) by removing "$5,500" and adding, in its place, "$10,781", and by revising the authority citation at the end of the section, to read as follows:

§ 42.3 Basis for Civil Penalties and Assessments.

* * * * *

(Authority: 28 U.S.C. 2461; 31 U.S.C. 3802)

[FR Doc. 2016–14592 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0187; FRL–9948–01–Region 9]

Limited Disapproval of Air Plan Revisions; Arizona; New Source Review; $PM_{2.5}$

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited disapproval of a revision to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP) under the Clean Air Act (CAA or Act). This ADEQ-submitted SIP revision primarily was intended to serve as a replacement of ADEQ's SIP-approved rules for the issuance of New Source Review (NSR) permits for stationary sources, including but not limited to the rules governing the review and permitting of major sources and major modifications under the Act. This action concerns only the major nonattainment NSR provisions in ADEQ's submittal as they pertain to the Nogales and West Central Pinal nonattainment areas for particulate matter with a diameter of 2.5 micrometers or less ($PM_{2.5}$). The EPA previously finalized a limited approval for these $PM_{2.5}$ nonattainment areas related to certain major nonattainment NSR permitting requirements for $PM_{2.5}$ under the CAA. We subsequently proposed a limited disapproval for these $PM_{2.5}$ nonattainment areas to set the stage for remedying certain deficiencies related to these nonattainment NSR permitting requirements for $PM_{2.5}$, and this action finalizes this limited disapproval.

DATES: This rule will be effective on July 22, 2016.

ADDRESSES: The EPA has established docket number EPA–R09–OAR–2015–0187 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lisa Beckham, EPA Region IX, (415) 972–3811, *beckham.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On May 2, 2016, the EPA proposed a limited disapproval of the major nonattainment NSR portion of ADEQ's NSR SIP submittal for $PM_{2.5}$ as it pertains to the requirements of CAA section 189(e). See 81 FR 26185. ADEQ's NSR SIP submittal generally includes requirements for the $PM_{2.5}$

nonattainment NSR program for major sources consistent with the provisions promulgated in the EPA's 2008 NSR $PM_{2.5}$ Rule. Specifically, ADEQ's NSR SIP submittal includes the $PM_{2.5}$ significant emission rates at R18–2–101(130), regulation of certain $PM_{2.5}$ precursors (SO_2 and NO_X) at R18–2–101(130), the regulation of PM_{10} and $PM_{2.5}$ condensable emissions at R18–2–101(122)(f), and the emissions offset requirements at R18–2–403(A)(3). The EPA approved these provisions into ADEQ's SIP as part of a limited approval and limited disapproval, and other actions, on November 2, 2015 (80 FR 67319). At that time, we did not determine that the submittal fully addressed section 189(e) in title I, Part D, subpart 4 of the Act, related to NSR permitting requirements for $PM_{2.5}$ for major stationary sources in $PM_{2.5}$ nonattainment areas, and instead finalized a limited approval related to the requirements of subpart 4 based on this issue.

For $PM_{2.5}$ nonattainment areas, CAA section 189(e) requires that the control requirements applicable under plans in effect under part D of the CAA for major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standards in the area. In our May 2, 2016 proposed action, we proposed to determine that ADEQ's NSR SIP submittal does not fully satisfy the major nonattainment NSR requirements for $PM_{2.5}$ under section 189(e) of the Act for the Nogales and West Central Pinal $PM_{2.5}$ nonattainment areas, based on our finding that the submittal does not include rules regulating VOCs or ammonia as $PM_{2.5}$ precursors under the major source nonattainment NSR program, nor does it include a demonstration showing that the regulation of VOCs and ammonia is not necessary under section 189(e).

The preamble in the **Federal Register** notification for our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

The EPA's May 2, 2016 proposed action provided a 30-day public comment period. During this period, we did not receive any comments on our proposal.

III. EPA Action

No comments were submitted on our proposed action. Therefore, as authorized in sections 110(k) of the Act, the EPA is finalizing a limited disapproval of the ADEQ NSR SIP submittal for the Nogales and West Central Pinal $PM_{2.5}$ nonattainment areas under section 189(e) of the Act related to $PM_{2.5}$ precursors.

As a result of this final action, the EPA must promulgate a federal implementation plan (FIP) under section 110(c) to address the deficiencies that are the subject of this action unless we approve subsequent SIP revisions that correct the deficiencies within 24 months. In addition, sanctions will be imposed unless the EPA approves subsequent SIP revisions that correct these deficiencies within 18 months of the effective date of this action. These sanctions would be imposed under section 179 of the Act and 40 CFR 52.31.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 13, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–14669 Filed 6–21–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 03–185; GN Docket No. 12–268; ET Docket No. 14–175; FCC 15–175]

Low Power Television Digital Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, certain information collection requirements associated with the Commission's Low Power Television Digital Rules Report and Order, FCC 15–175. This document is consistent with the Low Power Television Digital Rules Report and Order, which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the rule.

DATES: 47 CFR 74.800, published at 81 FR 5041, February 1, 2016, is effective June 22, 2016.

FOR FURTHER INFORMATION CONTACT: Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on June 15, 2016, OMB approved the information collection requirements contained in the Commission's Low Power Television Digital Rules Report and Order, FCC 15–175, published at 81 FR 5041, February 1, 2016. The OMB Control Number is 3060–1177. The Commission publishes this document as an announcement of the effective date of the requirement. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1177, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on June 15, 2016 for the information collection requirements contained in FCC 15–175, 47 CFR 74.800. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1177. The foregoing document is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control No.: 3060–1177.

OMB Approval Date: June 15, 2016.

OMB Expiration Date: June 30, 2019.

Title: 47 CFR 74.800, Channel Sharing Agreement.

Form Numbers: Not applicable.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 100 respondents; 100 responses.

Estimated Hours per Response: 1 hr.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 100 hours.

Total Annual Cost: $54,000.

Obligation to Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: On December 18, 2015, the Commission released a Third Report and Order and Fourth Notice of Proposed Rulemaking, In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, MB Docket No. 03–185, FCC 15–175. Low power television and television translator stations (collectively "LPTV stations") will be required to include certain terms in their channel sharing agreements (CSAs) and to file their CSAs with the Commission. This new requirement is provided in 47 CFR 74.800.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–14804 Filed 6–21–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 562

[Docket No. NHTSA–2016–0064]

RIN 2127–AL28

Lighting and Marking on Agricultural Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Pursuant to the Moving Ahead for Progress in the 21st Century Act (MAP–21), the agency is adding a new regulation to the CFR that sets forth requirements for lighting and marking on agricultural equipment to improve daytime and nighttime visibility. It standardizes lighting and marking requirements for agricultural equipment across the United States.

DATES: *Effective Date:* June 22, 2016.

Compliance Date: June 22, 2017.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 22, 2016.

ADDRESSES:

Mail: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

Docket: For access to the docket to read background documents, go to *http://www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Wayne McKenzie, Office of Crash Avoidance Standards, NHTSA, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590 (Telephone: (202) 366–0098) (Fax: (202) 366–7002).

For legal issues: Ms. Rebecca Yoon, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590 (Telephone: (202) 366–2992) (Fax: (202) 366–3820).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

On July 6, 2012, the President signed into law the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141. Section 31601 of MAP–21 contains a non-discretionary mandate concerning daytime and nighttime visibility of agricultural equipment that may be operated on public roads.[1] It requires NHTSA [2] to establish lighting and marking standards equivalent to an existing industry standard for agricultural equipment that may be operated on public roads.

This rulemaking implements that mandate by adopting the American Society of Agricultural and Biological Engineers (ASABE) Standard 279.14, a voluntary industry consensus standard, for originally manufactured agricultural equipment.

II. Background

NHTSA has not regulated the manufacture of most agricultural equipment in the past, because it did not have specific authority to do so. Under the National Traffic and Motor Vehicle Safety Act (49 U.S.C. Chapter 30101 *et. seq.*) (Safety Act), NHTSA is authorized to regulate motor vehicles and items of motor vehicle equipment. NHTSA has interpreted most types of agricultural equipment to be outside the definition of "motor vehicle" contained in the Safety Act, and therefore beyond NHTSA's safety authority. As defined in the Safety Act, a motor vehicle means "a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways. . . ." (49 U.S.C. 30102). We have stated that vehicles equipped with tracks, agricultural equipment, and other vehicles incapable of highway travel are not motor vehicles. We have also determined that certain vehicles designed and sold solely for off-road use (*e.g.,* airport runway vehicles and underground mining vehicles) are not motor vehicles, even if they may be operationally capable of highway travel. Also, vehicles are not motor vehicles if they were designed to be used primarily at off-road job sites and, although capable of being operated on public roads from one job site to another, use roads only incidentally to the primary purpose for which they were manufactured (*e.g.,* mobile cranes).[3]

Use of most agricultural equipment on the public roadways is intermittent and merely incidental to its primary off-road use. In a limited number of circumstances NHTSA has determined a piece of agricultural equipment to be a motor vehicle based on the specific factors listed above, such as its necessary and recurring use of public roads.[4] However, NHTSA does not consider the vast majority of pieces of agricultural equipment to be motor vehicles within the meaning of the Safety Act.

Consequently, States have been the primary sources of regulations for agricultural equipment lighting and marking. The result has been a varied landscape of regulations. NHTSA understands that this has created difficulties for manufacturers seeking to sell and market agricultural equipment that will meet all State on-road use requirements in multiple States. A national requirement for lighting and marking on agricultural equipment may reduce costs and increase efficiency for manufacturers selling agricultural equipment in multiple States.

As discussed in greater detail in Section VI below, ASABE's development of voluntary standards has begun to standardize the requirements for agricultural equipment. Some States have adopted versions of ASABE Standard 279 as their requirement for lighting and marking on agricultural equipment.

MAP–21 contains a non-discretionary mandate requiring NHTSA to establish a Federal rule for lighting and marking on agricultural equipment that is equivalent to the ASABE lighting and marking standard. NHTSA is issuing this rule in response to that mandate.

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[1] Section 31601 of MAP–21 was classified as a note to 49 U.S.C. 30111.

[2] Section 31601 of MAP–21 directs the Secretary of Transportation to promulgate this rule. This authority is delegated to the National Highway Traffic Administrator at 49 CFR 1.95.

[3] *See e.g.,* letter of interpretation to Ms. Melissa A. Burt on Jan. 12, 2005, *available at http://isearch.nhtsa.gov/files/Supreme_intl.html* (last accessed May 31, 2016).

[4] *See e.g., id.* (determining that the Truck Mount Feed Processor was a motor vehicle based on its more-than-incidental use of public roads and the fact that the vehicle is constructed using a chassis cab, which was not altered in ways that would limit it to off-road use).

This creates a federal, nationwide standard for lighting and marking on agricultural equipment, which may reduce the burden on manufacturers manufacturing agricultural equipment for sale in multiple States.

III. Legislative Mandate Under MAP–21

Section 31601 of MAP–21 contains the non-discretionary requirement that NHTSA establish minimum lighting and marking standards for agricultural equipment that may be operated on public roads. Section 31601 requires NHTSA's standards to be equivalent to ASABE 279.14, or any successor standard. The term "agricultural equipment," as it applies in this section of MAP–21, has the meaning given the term "agricultural field equipment" in ASABE Standard 390.4, entitled "Definitions and Classifications of Agricultural Field Equipment," or any successor standard. Standard 390.4 defines "agricultural field equipment" as "any agricultural tractor,[5] self-propelled machine,[6] implement[7] or any combination thereof that is primarily designed for agricultural field operations." Additionally, "public road" is defined as "any road or street under the jurisdiction of and maintained by a public authority and open to public travel."

Given the clear and direct language contained in section 31601, NHTSA does not have the discretion to choose to base its standards on any standard other than ASABE Standard 279.14 or an equivalent standard, or to set a standard that differs in any way from ASABE Standard 279.14 or an equivalent standard.

NHTSA is required to promulgate the rule required by section 31601 within two years of MAP–21's enactment. At least once every five years after promulgating the rule, NHTSA is required to review it and update it consistent with the most recent revision of ASABE Standard 279.

Section 31601 also specifies that the promulgated rule may not prohibit the operation on public roads of agricultural equipment that is equipped with lighting and marking materials and equipment that comply with revisions of ASABE Standard 279 that are later than the one reflected in the rule. The promulgated rule also may not prohibit the operation on public roads of agricultural equipment that is equipped with lighting and marking materials and equipment in addition to those required by the rule.

The promulgated rule may not require retrofitting of agricultural equipment manufactured before the effective date of the rule.

Section 31601 also contains the requirement that NHTSA establish such standards at least one year after the date on which the rule establishing such standards is promulgated. Accordingly, the compliance date for this rule is June 22, 2017.

Finally, section 31601(b)(1) requires that NHTSA consult with representatives from ASABE, appropriate Federal agencies, and with other appropriate persons prior to promulgating this rule. NHTSA met with representatives from ASABE, the Association of Equipment Manufacturers, and AGCO in April 2013 to consult with them regarding this rulemaking. We have also reached out to other agricultural equipment manufacturers. Additionally, NHTSA has identified the following appropriate Federal agencies and consulted with them regarding this rulemaking: the Federal Motor Carrier Safety Administration, the Occupational Safety and Health Administration, and the United States Department of Agriculture.

IV. Notice and Comment Are Unnecessary

Generally, agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the Administrative Procedure Act (APA), as provided in 5 U.S.C. 553(b) and (c). However, 5 U.S.C. 553(b)(3)(B) provides an exception to these requirements when notice and public comment procedures are "impracticable, unnecessary, or contrary to the public interest."

NHTSA finds that notice and comment is unnecessary prior to adoption of this final rule because Congress statutorily mandated that NHTSA adopt specific existing lighting and agricultural marking standards. By incorporating these standards into federal regulation, NHTSA is performing a non-discretionary act. MAP–21 expressly requires NHTSA to establish lighting and marking standards for agricultural equipment that are equivalent to ASABE Standard 279.14, or any successor standard. NHTSA is not aware of any other lighting and marking standard for agricultural equipment that is equivalent to ASABE Standard 279.14 or any successor standard. Because NHTSA's statutory authority is limited to either incorporating ASABE Standard 279.14, or an equivalent standard, NHTSA is unable to amend the rule to address any comments it may receive during a comment period. For this reason, a notice and comment period is unnecessary for this rulemaking.

Therefore, NHTSA may adopt this rule without issuing a notice of proposed rulemaking and receiving public comment, in accordance with the APA. For these same reasons, the rule will be effective on June 22, 2016.

V. ASABE Standards Development

Since its inception in 1907, ASABE[8] has been an educational and scientific organization in the areas of agricultural, food and biological systems. Over the years, membership has grown to over 8,000 members in over 100 countries. Its involvement in the industry has evolved to include the creation and development of its own voluntary standards that have become widely accepted. Many States use ASABE standards as the basis for their own regulations. ASABE has developed a comprehensive standards development process that gives its Standards Committee members as well as the general membership population ample involvement and input in the journey from proposal to final adopted standard.

ASABE's standard creation is a 12 step process from start to finish that is supervised by ASABE's Standards Development and Oversight Committees.[9] After making it through the proposal phase, a draft standard is created that is voted on by all members of the Standards Development Committee. In order for it to be approved, at least 50% of the total Standards Development Committee must vote and it must receive 75% of those votes in favor. Upon receiving approval from the Standards Development Committee, it is sent to the Oversight Committee, which reviews both the standard and the voting results of the Standards Committee. After receiving approval from the Oversight Committee the standard is approved and published.[10]

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[5] ASABE defines an agricultural tractor as "A traction machine, intended primarily for off-road usage, designed and advertised primarily to supply power to agricultural implements. . . ." ANSI/ASAE S390.4 JAN2005, 3.1.1–3.1.1.12.

[6] ASABE defines a self-propelled machine as "a machine designed with an integral power unit to provide mobility, tractive effort, and process power for performing agricultural operations." Examples include beet harvesters, combines, cotton pickers, forage harvesters, cotton strippers, and forage balers. ANSI/ASAE S390.4 JAN2005, 3.1.2–3.1.2.3.2.

[7] The ASABE definition further defines and lists agricultural implements as items that are pulled by or mounted on a tractor and used to perform agricultural field operations, such as planters or seed drills. ANSI/ASAE S390.4 JAN2005, 3.1.3–3.1.3.10.

[8] ASABE was founded as the American Society of Agricultural Engineers. The society changed its name to the American Society of Agricultural and Biological Engineers in 2005 to reflect its representation of biological engineers. ASABE: Engineering a Sustainable Tomorrow, *available at http://www.asabe.org/media/67573/timeline_reverse.pdf* (last accessed May 31, 2016).

[9] ASABE Staff. (n.d.). Standards. In Standards Development Tools—Standardization Procedures, *available at http://www.asabe.org/standards.aspx* (last accessed May 31, 2016).

VI. Summaries of and Availability of ASABE Standards 390.4; "Definitions and Classifications of Agricultural Field Equipment" and 279.14; "Lighting and Marking of Agricultural Equipment on Highways"

ASABE initially developed Standard 279, "Lighting and Marking of Agricultural Equipment on Highways," in 1954. Since then, the standard has been modified and revised numerous times. ASABE continues to update it. It contains voluntary standards specified for lighting and marking for all types of agricultural field equipment (as defined in ASABE Standard 390) that may be operated on public highways and roads. ASABE defines "agricultural field equipment" as "any agricultural tractor, self-propelled machine, implement or any combination thereof that is primarily designed for agricultural field operations." Section 31601 of MAP–21 defines "agricultural equipment," for purposes of this rulemaking, to be the same as ASABE's definition for "agricultural field equipment."

ASABE Standard 279.14 and the definition of "agricultural field equipment" at 390.4 are the versions of the standards that are expressly identified in MAP–21. MAP–21 states that NHTSA may establish a rule that is equivalent to these or any successor standards. MAP–21 additionally states that NHTSA may not prohibit the operation on public roads of agricultural equipment that is equipped with lighting and marking in accordance with later versions of the ASABE standard than the one incorporated at promulgation.

ASABE has updated both Standard 279, which is currently on version 279.18, and the definition section, which is currently on version 390.5, since MAP–21 became effective. Based on our review, NHTSA does not believe that ASABE's updates to these standards are significant for purposes of this rulemaking.

ASABE Standard 390.4 defines agricultural field equipment as "Agricultural tractors, self-propelled machines, implements, and combinations thereof designed primarily for agricultural field operations."

At the present time, many States use various versions of the standard. States do not always incorporate the latest version of Standard 279 or update their standards to reflect the latest version. This has created a landscape with a variety of slightly differing standards by State. Adopting ASABE Standard 279.14, as mandated by Congress, may help standardize lighting and marking requirements for agricultural field equipment by establishing one federal requirement.

The lighting and marking[11] parameters of ASABE Standard 279.14 are as follows:

Category	Requirements
Tractors and Self-Propelled Equipment.	Two head lamps, two red tail lamps and at least two flashing amber warning lights must be mounted at the same height and spaced laterally as wide as possible. At least two flashing amber warning lights visible from both front and rear must be used when the machine is at least 3.7 m wide. Turn signals must be provided. For machines designed to exceed 40 km/h, at least two red rear facing stop lamps must be mounted that illuminate when operator has activated the brake control. If the machine is less than 1200 mm wide, only one stop lamp may be used. Machines that travel at less than 40 km/h may be equipped with red rear facing stop lamps. If equipped, then two red tail lamps must be mounted at the same height and spaced laterally as wide as possible. Two red retro reflective devices must be visible from the rear. Machines wider than 3.7 m shall have conspicuity material visible from both the front and rear. There are requirements for rotating beacons, if the agricultural equipment is equipped with them. One slow moving vehicle (SMV) identification emblem must be installed on the machine. There are CAN bus terminal receptacle requirements, if the agricultural equipment is equipped with them.
Non Self-Propelled Equipment.	Equipment that obscures the SMV emblem of the propelling machine shall be equipped with an additional visible SMV emblem. Equipment that extends more than 1.2 m to the left or right of the propelling machine shall have at least one strip of yellow retro reflective material visible from the front and at least one strip of red retro reflective material visible from the rear applied to indicate the extreme projections of the equipment. Equipment more than 3.7 m wide must have at least two strips of yellow retro reflective material visible to the front and at least two strips of red retro reflective material visible to the rear of the machine. Equipment extending more than 5 m to the rear of the propelling vehicle shall be equipped with at least one SMV emblem and shall have yellow retro reflective material visible from the left and right sides. Equipment that obscures the tail lamps, flashing warning lamp, or stop lamp of the propelling machine, shall be fitted as appropriate with lighting to take the place of the lamp(s) obscured. Equipment that obscures the front or rear flashing lamps of the propelling machine shall have at least two amber flashing lamps symmetrically mounted to the machine, visible from the front or rear of the machine. Turn indicators shall be provided if necessary due to obstruction of turn indicators on the tow vehicle. Stop lamps shall be provided for machines designed to travel at speeds above 40 km/h if necessary due to obstruction of turn indicators on the tow vehicle. All required lamps on non-self-propelled equipment shall be connected to a seven terminal plug conforming to SAE J560.

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[10] ASABE Staff. (n.d.). Standards. In Standards Development Tools-•Flow chart of the ASABE Standards Process, *available at http:// www.asabe.org/standards.aspx* (last accessed May 16, 2016).

[11] Photometry testing, details, and limits are not reproduced here. To review these requirements, please see ASABE Standard 279.14, available in the DOT reading room.

Both of these ASABE standards are reasonably available to the public. You may obtain a copy from ASABE through their Web site at *http://www.asabe.org/publications/publications/standards.aspx* and by mail at ASABE, 2950 Niles Road, St. Joseph, Michigan 49085–9659. Additionally, you may inspect a copy at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 or at the National Archives and Records Administration.

VII. NHTSA Is Incorporating ASABE Standards by Reference

To meet the statutory requirement to set standards, NHTSA is establishing a new standard at 49 CFR part 562. Section 31601 of MAP–21 requires that the lighting and marking standards established under that section be equivalent to ASABE Standard 279.14, or any successor standard. In response, NHTSA is incorporating ASABE Standard 279.14 in part 562 in its entirety.

NHTSA believes that it can provide a limited amount of compliance flexibility by incorporating version 279.14 into our standard, rather than the most current version of 279, because MAP–21 does not allow NHTSA to prevent operation on public roads of equipment meeting later versions of the standard. In other words, by incorporating version 279.14, we are allowing compliance with the version identified by Congress or any later version. We believe this approach is consistent with Congress's intent, because it incorporates the version identified by Congress, while also providing some limited compliance flexibility.

Section 31601 of MAP–21 gives the term "agricultural equipment" the same meaning as the term "agricultural field equipment" in ASABE Standard 390.4, or any successor standard. Accordingly, NHTSA is incorporating the ASABE Standard 390.4 definition of "agricultural field equipment" by reference. The ASABE definition for "agricultural field equipment," which is the statutory definition for "agricultural equipment" under section 31601, includes tractors,[12] self-propelled machines[13] and implements.[14] Part 562 will apply to new agricultural equipment that may be operated on a public road, specifically defined as "any road or street under the jurisdiction of and maintained by a public authority and open to public travel."[15] Personal equipment used primarily by homeowners, such as lawn tractors, and lawnmowers, is beyond the scope of this rulemaking.

Section 31601 of MAP–21 also requires that NHTSA establish these lighting and marking standards for applicable agricultural equipment manufactured at least one year after the date on which the rule establishing such standards is promulgated. Accordingly, the date on which agricultural equipment subject to this rule must be compliant is June 22, 2017.

VIII. Costs and Benefits

The majority of agricultural equipment that will be subject to the rule is produced by large, full-line equipment manufacturers, such as John Deere, Agco and Kubota. NHTSA believes that many of these large agricultural equipment manufacturers already build their products to comply with the latest version of ASABE Standard 279. As a result, NHTSA believes that the majority of pieces of agricultural equipment manufactured in the United States are already in compliance with ASABE Standard 279.14 or a successor standard.

Those that are not already compliant with ASABE Standard 279 could easily be made so for a very low cost or at no cost. For example, the reflective conspicuity tape necessary for compliance can be purchased for as low as 75 cents per foot. More expensive components, such as head and tail lights, which are required for some pieces of equipment, can be sourced on the open market for less than $50.00 per set.

NHTSA believes that manufacturers may benefit from this rulemaking because it seeks to federally standardize lighting and marking requirements for agricultural equipment that may be operated on public roads. We acknowledge that manufacturers may still need to equip their pieces of agricultural equipment with additional lighting and marking, as required by State laws. Equipping agricultural equipment subject to this rulemaking with additional lighting and marking than that required by part 562 is expressly allowed by section 31601 of MAP–21, and accordingly by NHTSA's rule.

IX. Rulemaking Analyses

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies require this agency to make determinations as to whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the aforementioned Executive Orders. Executive Order 12866 defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the potential impact of this rulemaking under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under E.O. 12866 and E.O. 13563. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979) and has determined that it is not "significant" under them.

This rule creates a standard based on a Congressional mandate for agricultural equipment. It does not impose any additional requirements. The agency concludes that the impacts of the changes are not significant and that a preparation of a full regulatory evaluation is not required.

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[12] ASABE defines an agricultural tractor as "a traction machine, intended primarily for off-road usage, designed and advertised primarily to supply power to agricultural implements . . . ." ANSI/ASAE S390.5 JAN2011, 3.1.1–3.1.1.12.

[13] ASABE defines a self-propelled machine as "a machine designed with an integral power unit to provide mobility, tractive effort, and process power for performing agricultural operations." Examples include beet harvesters, combines, cotton pickers, forage harvesters, cotton strippers, and forage balers. ANSI/ASAE S390.5 JAN2011, 3.1.2–3.1.2.3.2.

[14] The ASABE definition further defines and lists agricultural implements as items that are pulled by or mounted on a tractor and used to perform agricultural field operations, such as seed drills and planters. ANSI/ASAE S390.5 JAN2011, 3.1.3–3.1.3.10.

[15] This is more precise than the general description under the Safety Act that "motor vehicles" and "motor vehicle equipment" are those that are for use on "public streets, roads, and highways." *See* 49 U.S.C. 30102(a)(6) and (7).

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. No regulatory flexibility analysis is required if the head of an agency certifies the proposal or rulemaking will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal or rulemaking effort will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. This rule establishes lighting and marking standards for agricultural equipment that may be operated on public roads, by adopting ASABE Standard 279.14, pursuant to section 31601 of MAP–21. NHTSA believes that a large number of agricultural equipment manufacturers are already in compliance with the requirements due to the existing ASABE industry standard and State regulations. Furthermore, those that are not already compliant with the requirements could easily be made so for a very low cost or at no cost. For example, the reflective conspicuity tape necessary for compliance can be purchased for as low as 75 cents per foot. Slightly more expensive components such as head and tail lights, which are required for some pieces of equipment, can be sourced on the open market for less than $50.00 per set.

Because the materials needed to comply with ASABE Standard 279 are inexpensive and the majority of the market is already in compliance, the cost of this rule is expected to be minimal and it should not adversely affect small agricultural equipment manufacturers in a material way. Accordingly, NHTSA certifies that this FR will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

NHTSA has examined this FR pursuant to Executive Order 13132 and concluded that the rulemaking will not have sufficient federalism implications to warrant consultation with State and local officials, nor the preparation of a federalism summary impact statement. The rule will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Section 31601 of MAP–21 does not have an express savings or preemption provision; therefore general principles of preemption apply to the regulation. Principles of preemption provide that State standards are preempted to the extent that they conflict with Federal regulations, and they are preempted if the State regulations frustrate the purpose of the Federal regulation.

NHTSA believes that most State lighting and marking requirements for agricultural equipment incorporate or are based on a version of ASABE Standard 279. This is the standard that NHTSA is adopting in this rulemaking. Therefore, we do not expect that the regulation will significantly differ from existing lighting requirements.

Under general principles of preemption, if it would not be possible to comply with the requirements of both the federal requirements and a State standard, the federal requirements would prevail. We believe that agricultural equipment operators and manufacturers will be able to comply with both State and federal standards in instances in which they differ. Moreover, as required by section 31601(d)(3) of MAP–21, this regulation does not prohibit the operation on public roads of agricultural equipment that is equipped with materials or equipment that are in addition to the minimum materials and equipment specified in this rule. ASABE Standard 279.14 provides a range of places on agricultural equipment for mounting lighting and marking materials and equipment in compliance with that standard. As a result, individuals may mount lighting and marking materials and equipment in addition to that required by this rule in order to comply with any differing State standard. For these reasons, the rule will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

D. Executive Order 12988 (Civil Justice Reform)

When promulgating regulations, agencies are required by Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The fact that this rulemaking will not have a preemptive effect is discussed above in connection with Executive Order 13132. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

E. Executive Order 13609 (Promoting International Regulatory Cooperation)

The policy statement in section 1 of Executive Order 13609 provides, in part:

> The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA reiterates that its discretion is very limited under section 31601 of MAP–21. NHTSA is specifically required to adopt a standard equivalent to ASABE Standard 279.14 or a successor standard.

F. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as SAE International (SAE).

Per section 31601 of MAP–21, NHTSA is incorporating ASABE Standard 279.14, in its entirety. ASABE is a voluntary consensus standards body, as described in Section V.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). In 2010 dollars, this threshold is $136 million.[16] This rule is not expected to result in the expenditure by State, local, or tribal governments, in the aggregate, of more than $136 million annually.

H. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant adverse impact on the quality of the human environment.

I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et. seq.), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rulemaking does not establish any new information collection requirements.

J. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

NHTSA considered and applied these plain language principles in the drafting of this FR.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Regulatory Text

List of Subjects in 49 CFR Part 562

Agricultural equipment, Highway safety, Incorporation by reference.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter IV, Subchapter B by adding part 562 as follows:

PART 562—LIGHTING AND MARKING OF AGRICULTURAL EQUIPMENT

Sec.

562.1 Scope and purpose.
562.3 Definitions.
562.5 Applicability.
562.7 Lighting and marking requirements for new agricultural equipment.
562.9 Compliance not affected by addition of certain materials and equipment.
562.11 Incorporation by reference.

Authority: Sec. 31601, Pub. L. 112–141, 126 Stat. 405; 49 U.S.C. 30111 note; delegation of authority at 49 CFR 1.95.

§ 562.1 Scope and purpose.

This part establishes minimum lighting and marking standards for new agricultural equipment as required by the Moving Ahead for Progress in the 21st Century Act (Sec. 31601, Pub. L. 112–141).

§ 562.3 Definitions.

Agricultural equipment has the meaning given the term "agricultural field equipment" in the ANSI/ASAE 390.4 JAN2005, "Definitions and Classifications of Agricultural Field Equipment" (incorporated by reference, see *§ 562.11).*

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

§ 562.5 Applicability.

This standard applies to new agricultural equipment that may be operated on a public road.

§ 562.7 Lighting and marking requirements for new agricultural equipment.

New agricultural equipment that may be operated on a public road must meet the lighting and marking standards set forth in ANSI/ASAE 279.14 JUL2008, "Lighting and Marking of Agricultural Equipment on Highways" (incorporated by reference, see § 562.11).

§ 562.9 Compliance not affected by addition of certain materials and equipment.

(a) *Successor standards.* Equipping new agricultural equipment that may be operated on a public road with lighting and marking materials and equipment that comply with a revision of ANSI/ASAE Standard 279 adopted after the version cited in § 562.7 does not affect compliance with the requirements of this part.

(b) *Additional materials and equipment.* Equipping new agricultural equipment that may be operated on a public road with lighting and marking materials and equipment that are in addition to the minimum requirements specified in § 562.7 does not affect compliance with the requirements of this part.

§ 562.11 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect approved material at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 or at the National Archives and Records Administration. For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(a) American Society of Agricultural and Biological Engineers (ASABE) 2950

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[16] Adjusting this amount by the implicit gross domestic product price deflator for the year 2010 results in $136 million (110.644/81.533 = 1.36).1

Niles Road, St. Joseph, Michigan 49085–9659, (269) 429–0300. *http://www.asabe.org/publications/publications/standards.aspx.*

(1) ANSI/ASABE 279.14 JUL2008, "Lighting and Marking of Agricultural Equipment on Highways," approved August 2008, into § 562.7.

(2) ANSI/ASAE 390.4 JAN2005, "Definitions and Classifications of Agricultural Field Equipment," approved February 2005, into § 562.3.

(b) [Reserved].

Issued on June 14, 2016, in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Mark R. Rosekind,

Administrator.

[FR Doc. 2016–14571 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2015–0144; 4500030113]

RIN 1018–BA94

Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Elfin-Woods Warbler With 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act (Act), as amended, for the elfin-woods warbler (*Setophaga angelae*), a bird species in Puerto Rico. This rule will add this species to the List of Endangered and Threatened Wildlife. We are also adopting a rule under the authority of section 4(d) of the Act (a "4(d) rule") that is necessary and advisable to provide for the conservation of the elfin-woods warbler.

DATES: This rule is effective July 22, 2016.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/caribbean.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* Comments, materials, and documentation that we considered in this rulemaking will be available by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Marelisa Rivera, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 Km. 5.1, Boquerón, PR 00622; telephone 787–851–7297; facsimile 787–851–7440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

This rule finalizes the listing of the elfin-woods warbler (*Setophaga angelae*) as a threatened species. It includes provisions under the authority of section 4(d) of the Act that are necessary and advisable for the conservation needs of the elfin-woods warbler.

The basis for our action. Under the Act, we may determine that a species is a threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that this species is currently at risk throughout all of its range due to threats related to habitat modification on private lands under agricultural and other land use requiring vegetation clearance (Factor A) and to other natural or manmade factors, such as restricted distribution and lack of connectivity, genetic drift, hurricanes, and the effects of climate change (Factor E).

Under section 4(d) of the Act, the Secretary of the Interior has discretion to issue such regulations she deems necessary and advisable to provide for the conservation of the species. The Secretary also has the discretion to prohibit by regulation, with respect to a threatened species, any act prohibited by section 9(a)(1) of the Act.

Habitats within some of the physically degraded private lands adjacent to elfin-woods warbler existing populations must be improved before they are suitable for the species; therefore, some activities that would normally be prohibited under 50 CFR 17.31 and 17.32 will contribute to the conservation of the elfin-woods warbler. For the elfin-woods warbler, the Service has determined that species-specific regulations authorized by section 4(d) of the Act are necessary and advisable to provide for the conservation of this species.

Peer review and public comment. We sought comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on the listing proposal. We considered all comments and information we received during the comment period.

Previous Federal Action

Please refer to the proposed listing rule (80 FR 58674, September 30, 2015) for a detailed description of previous Federal actions concerning the elfin-woods warbler.

Summary of Comments and Recommendations

In the proposed rule published on September 30, 2015 (80 FR 58674), we requested that all interested parties submit written comments on the proposal by November 30, 2015. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. On October 3, 2015, we published a newspaper notice in the Primera Hora inviting general public comment. We did not receive any requests for a public hearing.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from six knowledgeable individuals with scientific expertise that included familiarity with the elfin-woods warbler and its habitat, biological needs, and threats. We received responses from four of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of elfin-woods warbler. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Substantive peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

(1) Comment: One peer reviewer stated that the proposed listing rule did not include references to the Puerto Rico Breeding Bird Atlas Project of the Sociedad Ornitológica Puertorriqueña, Inc. (SOPI; *http://www.aosbirds.org/prbba/SpeciesEWWA.html*). The peer reviewer noted there is one record of the elfin-woods warbler being detected during this project on March 31, 2005, in an area between Jayuya and Adjuntas (hexagon 913) in the central mountains of Puerto Rico by Bailey McKay and Richard West. The peer reviewer also indicated that during a Bicknell's thrush study conducted by the Vermont Center for Ecostudies between January and March, 2015, elfin-woods warblers were detected in the Maricao Commonwealth Forest (MCF) and El Yunque National Forest (EYNF), but were not detected in the Carite Commonwealth Forest (CCF) or in the municipalities of Jayuya and Adjuntas.

Our Response: We appreciate these comments. We have added the new information regarding the observation of the elfin-woods warbler between Jayuya and Adjuntas to this final rule. The information available from the Web site provided by this reviewer classified this report as a possible observation of the elfin-woods warbler (identified with Code X (seen or heard within safe dates) in the database).

(2) Comment: A peer reviewer provided information about a nest-building activity by the elfin-woods warbler at the MCF recorded on May 5, 2002. The peer reviewer also provided information about the location and description of the nest.

Our Response: We appreciate this information, and have included the new nesting record in this final rule.

(3) Comment: A peer reviewer stated that bird enthusiasts and wildlife photographers may pose a problem to the elfin-woods warbler, as some of them use recordings to attract these birds, probably altering their normal behavior. The peer reviewer indicated this situation appears to be increasing, and the existing regulations do not clearly address this potential harassment.

Our Response: We appreciate this new information. At this time the Service does not have sufficient information to consider this action as a threat to the elfin-woods warbler. However, we will be monitoring the species and will keep track of the effect of these actions. When this final rule is effective (see **DATES**), regulations issued by the Service under the Act and by the Commonwealth of Puerto Rico under its laws will address actions that may result in take of the species.

(4) Comment: One peer reviewer emphasized the need for research on the elfin-woods warbler and its status to inform managers and to facilitate the species' future delisting. He indicated that automated recording units (ARUs), which automatically record sounds for later computer analyses, suggest tremendous potential for surveying the more inaccessible sites in CCF, Toro Negro, and EYNF.

Our Response: We acknowledge this comment and will develop recovery actions, including research needs, in the recovery plan for the species. The Service concurs with the peer reviewer on the use of ARUs to survey for the elfin-woods warbler in inaccessible sites. We have already initiated a project with academia and local nongovernmental organizations using ARUs to assess the presence of the elfin-woods warbler at the CCF and EYNF.

(5) Comment: One peer reviewer made reference to the description of the elfin-woods warbler included in the proposed listing rule, indicating that adult and sub-adult elfin-woods warbler do not have a stripe above the eyes.

Our Response: We appreciate this information. We described the elfin-woods warbler in the proposed listing rule based on Raffaele 1989 (p. 168). However, considering the expertise of this peer reviewer on the elfin-woods warbler, we included this detailed information and specified that adult and sub-adult elfin-woods warbler do not have a stripe above the eyes.

(6) Comment: One per reviewer indicated that the breeding season of the elfin-woods warbler should be extended to include the entire months of July and August because during these months the family groups stay together as a cohesive unit, which is essential for the survival of fledglings.

Our Response: We concur with this rationale and have made changes to the "Life History" and 4(d) Rule sections of this final rule to reflect the peer reviewer's input.

(7) Comment: A peer reviewer indicated that disturbances such as shade and coffee tree seasonal pruning and other activities described in the proposed 4(d) rule should be conducted from September 1 through February 28, which is the time period that the peer reviewer suggests is outside the breeding season of the elfin-woods warbler.

Our Response: The proposed 4(d) rule that was published with the proposed listing rule indicated that coffee tree seasonal pruning and other activities would be conducted from July 1 through February 28. However, we concur with the information presented by the peer reviewer, and have made changes to this final rule to reflect the peer reviewer's input.

(8) Comment: One peer reviewer warned about the potential of chemicals used for agriculture (such as pesticides, herbicides, and fertilizers) gaining access to the food chain and eventually to arthropods feeding birds such as the elfin-woods warbler.

Our Response: Under the proposed and this final 4(d) rule, pest control substances (*e.g.,* pesticides, herbicides) and fertilizers will be applied only twice a year during the establishment period of shade and coffee trees (*i.e.,* the first 2 years). The Service believes that during this period, the structure of the agroforestry system is not mature enough to sustain the occurrence of elfin-woods warblers within these areas. Therefore, we do not expect that the elfin-woods warbler will be negatively affected by these actions.

(9) Comment: A peer reviewer suggested modifying the following sentence in the Proposed Determination section: "Current available information indicates that the elfin-woods warbler has a limited distribution, with only two known populations occurring within EYNF and MCF, including the private lands adjacent to MCF, and at least one extirpated population from CCF." The suggested modification is as follows: "Current available information indicates that the elfin-woods warbler has a limited distribution, with only two known populations occurring within EYNF and MCF, including the private lands adjacent to MCF, and at least one possibly extirpated population from CCF."

Our Response: Based on the best available information, the elfin-woods warbler appears to be extirpated from CCF. However, we do not discard the possibility that the species still occurs in this forest. Therefore, we accept the peer reviewer's comment and have modified this rule accordingly.

Federal Agency Comments

Three of the peer reviewers consulted are also from Federal agencies. Only two provided peer review of the proposed rule, and their comments are addressed above under *Peer Reviewer Comments.* One additional Federal agency commented during the open comment period, but did not provide substantive information regarding the proposed listing.

Comments From the Commonwealth of Puerto Rico

(10) Comment: One Commonwealth agency indicated it does not expect any significant impacts on the elfin-woods warbler as a result of the projects it conducts. However, the agency asked to be contacted should additional information on the habitat and location of the species become available in order to prevent potential impacts from future projects.

Our Response: We appreciate these comments. Any new information about the species' distribution and habitat will be available to Commonwealth and Federal agencies via the Service's Environmental Conservation Online System (ECOS) Web site (*http://ecos.fws.gov/ecp/*) to be considered in future projects. For projects with a Federal nexus, consultations under section 7 of the Act address potential impacts to federally listed species.

Public Comments

We received three public comments. While all indicated support for the listing of the elfin-woods warbler as a threatened species, none provided substantive comments requiring the Service's response.

Summary of Changes From the Proposed Rule

Based upon our review of the comments from peer reviewers, other Federal and Commonwealth agencies, and the public, as summarized above, we reevaluated our proposed rule and incorporated the following changes into this final rule.

(1) We modified the information in the species description to specify that adult and sub-adult elfin-woods warbler do not have a stripe above the eyes (see "Species Description and Taxonomy," below).

(2) We added information regarding the report of the elfin-woods warbler between the municipalities of Adjuntas and Jayuya as part of the species' range (see "Historical and Current Distribution," below).

(3) We modified the information regarding the breeding season of the elfin-woods warbler to include the entire months of July and August (see "Life History," below).

(4) We modified the provisions of the 4(d) rule to set forth that coffee tree seasonal pruning and other activities must be conducted from September 1 to February 28 (see 4(d) Rule, below).

(5) We added information regarding an additional elfin-woods warbler's nest-building activity at the Maricao Commonwealth Forest (see "Life History," below).

Background

Species Information

Species Description and Taxonomy

The elfin-woods warbler was originally classified under the genus *Dendroica,* but is now recognized as *Setophaga* (Lovette *et al.* 2010, p. 765). Angela and Cameron Kepler discovered the species in 1971, in the Dwarf forest type at El Yunque National Forest (EYNF) (Kepler and Parkes 1972, p. 3–5). The bird is about 12.5 centimeters (cm) (5 inches (in)) in length (Raffaele 1998, p. 406). The adult's upper body is predominantly black and white, with conspicuous white patches on the ear coverts and sides of the neck (Raffaele 1989, p. 168; Delannoy 2015, pers. comm.). The elfin-woods warbler is often mistaken for the black and white warbler (*Mniotilta varia*), but the elfin-woods warbler is distinguished by its incomplete white eye-ring and entirely black crown. Immature elfin-woods warblers are similar to adults, except that they are grayish-green on the back, and yellowish-green on the head and underparts (Raffaele 1989, p. 168). The bird's call comprises a series of short, rapidly uttered, unmusical notes in one pitch, increasing in volume and ending with a short series of distinct double notes (Curson *et al.* 1994, p. 156).

Life History

Little detailed information has been published on the life history of the elfin-woods warbler. Some authors noted that the elfin-woods warbler is an extremely active warbler, moving among the dense vines of forest strata with more foliage cover or smaller branch tips, foraging insects, usually at intermediate foliage heights of 3 to 15 meters (m) (10 to 50 feet (ft)) (Colón-Merced 2013, p. 2). Opportunistic observations indicate the elfin-woods warbler feeds on moths, dragonflies, and other types of insects; however, its specific diet remains unknown (Colón-Merced 2013, p. 2). Raffaele *et al.* (1998, p. 406) indicated that the breeding season of the species occurs from March to June. However, Delannoy (2015, pers. comm.) stated that based on available information (*i.e.,* Delannoy 2009), the breeding season of the elfin-woods warbler should include the entire months of July and August because family groups stay together as a cohesive unit during May, June, July, and August. Delannoy (2009, p. 1) reported that four pairs of elfin-woods warblers banded between 2004 and 2008 remained together in their territories in the Maricao Commonwealth Forest (MCF), suggesting that the species is monogamous. In addition, he reported that the elfin-woods warbler maintained territorial defense throughout the year and documented that calling activity increases from January to April and declines considerably during the time pairs are incubating eggs or brooding nestlings.

Arroyo-Vázquez (1992, p. 363) reported the first detailed observation of two nests found in March and April of 1990 in aerial leaf litter at heights between 1.3 to 7.6 m (4.3 to 25 ft) and documented a clutch size of two to three eggs. Also, he observed that the pair's cup nest was woven from rootlets and fibers obtained from tree ferns and lined with grass leaves and down feathers. Raffaele *et al.* (1998, p. 406) further described the nest of the elfin-woods warbler as a compact cup, usually close to the trunk and well-hidden among epiphytes of a small tree. Salguero (2015, pers. comm.) indicated that on May 5, 2002, he and Carina Roig recorded a pair of elfin-woods warblers constructing a nest on a fork tip branch of a *Pinus caribaea* (Caribbean pine) about 5.0 m (16.4 ft) above ground at the former camping area near the MCF offices. Rodríguez-Mojica (2004, p. 22) reported the first nesting event inside a rotten tree stump of Palo Colorado (*Cyrilla racemiflora*) 7.0 m (23.3 ft) above ground in an abandoned camping area at the MCF. He described the nest structure as consisting of a tightly woven cup of fine plant fibers with dry leaves on its outside and noted that cavity-nesting is not common in warblers.

Arroyo-Vázquez (1992, p. 363) and Rodríguez-Mojica (2004, p. 22) suggested that the species selected aerial leaf litter and cavity-nesting sites to avoid predation. Some authors have suggested that elfin-woods warbler nest predators may include the pearly-eyed thrasher (*Margarops fuscatus*), Puerto Rican tanager (*Nesospingus speculiferus*), Puerto Rican screech owls (*Megascops nudipes*), Puerto Rican boa (*Chilabothrus inornatus,* listed as *Epicrates inornatus*), Puerto Rican racer (*Alsophis portoricensis*), and feral cats (*Felis catus*) (Delannoy 2009, p. 2). Other potential predators of immature and adult individuals include the Indian mongoose (*Herpestes auropunctatus*) and black rat (*Rattus rattus*) (Arroyo-Vázquez 1992, p. 364).

Historical and Current Distribution

The elfin-woods warbler is endemic to the island of Puerto Rico and was initially thought to occur only in the Luquillo Mountains at EYNF in eastern Puerto Rico (Kepler and Parks 1972, pp. 5–6; Pérez-Rivera 1979, p. 58). During the early 1970s, the species was reported in the MCF in western Puerto Rico (Pérez-Rivera 1979, p. 58; Cruz and Delannoy 1984, p. 92). In addition, the elfin-woods warbler was reported in the Toro Negro Commonwealth Forest in the Cordillera Central (central mountain range) (Pérez-Rivera 1979, p. 58), and in the area of Guavate in the Carite Commonwealth Forest in east-central Puerto Rico (Pérez-Rivera and Maldonado 1977, p. 134). More recently, Miranda-Castro *et al.* (2000, pp. 119–123) and Anadón-Irizarry (2006, p. 34) conducted elfin-woods warbler surveys in other forests of the Cordillera Central (*i.e.,* Tres Picachos, Carite, Toro Negro, Susúa, and Guilarte Commonwealth Forests, and Bosque del Pueblo in Adjuntas), but did not detect the species. However, on March 31, 2005, Bailey McKay and Richard West recorded a possible observation of the elfin-woods warbler between the municipalities of Adjuntas and Jayuya while collecting breeding bird data for the Puerto Rico Breeding Bird Atlas Project (Salguero 2015, pers. comm.; SOPI 2005).

Between 2011 and 2013, the Service, in collaboration with the Puerto Rican Ornithological Society, Inc., and BirdLife International, conducted a study using a habitat suitability model and a single-season occupancy modeling approach to assess the current geographic distribution of the elfin-woods warbler. The project included surveys between January and July during the species' breeding season within habitat currently occupied by the species in the MCF and predicted habitat within the Cordillera Central (Anadón-Irizarry 2013, p. 2). The predicted habitat included public and private lands within the municipalities of Jayuya, Ciales, Adjuntas, Ponce, Orocovis, and Juana Díaz. The species was detected only in the MCF and adjacent private lands (Service 2014, p. 12).

The elfin-woods warbler is particularly difficult to survey because of its small size, its constant moving behavior, and the dense vegetation of areas where it is found (Raffaele 1989, p. 168). In fact, Kepler and Parkes (1972, pp. 5–6) attribute the belated discovery of elfin-woods warbler to the above factors and their similarity to the black and white warbler. Even the vocalization of the elfin-woods warbler can be easily mistaken with other species. Although the presence of the elfin-woods warbler in the forests of the Cordillera Central of Puerto Rico cannot be disregarded based on the previous facts, the available information suggests that the current distribution of the species is now restricted to two populations in (1) EYNF and (2) MCF and adjacent private lands (Anadón-Irizarry 2006, p. 5; Delannoy 2007, p. 4; González 2008, p. 19). The EYNF and the MCF are located about 150 kilometers (km) (93 miles (mi)) from each other (Arendt *et al.* 2013, p. 2). These habitats are considered essential to elfin-woods warbler abundance and are very important for maintaining healthy populations of the species (Delannoy 2007, p. 24), as they are the only currently known areas where the species still occurs. Although there is suitable habitat for the species between these two forests (Colón-Merced 2013, p.51), the probability of dispersal for the species is low because EYNF is isolated from the central mountain range of Puerto Rico. Urban areas around EYNF increased by more than 2,000 percent between 1936 and 1988, and continue to encroach on forested areas today (Thomlinson and Rivera 2000, p. 17). Between 1988 and 1993, urbanization around this forest increased by 31 percent and represented a 5 percent loss in vegetative cover, more than 80 percent of which was dense forest (Thomlinson and Rivera 2000, p. 17).

Habitat

El Yunque National Forest—EYNF is located in the Sierra de Luquillo in eastern Puerto Rico and covers 11,310 hectares (ha) (28,000 acres (ac)) of the island's area (Weaver 2012, p. 1). This forest was proclaimed as a Crown Reserve by Spain in 1876, and as a Forest Reserve by the U.S. Government since 1903. It is considered the oldest forest reserve and largest protected area in Puerto Rico, and is managed by the U.S. Forest Service (USFS). Elevations of this forest range from 100 to 1,075 m (328 to 3,526 ft) and temperatures change with altitude, ranging between 23.5 and 27 degrees Celsius (°C) (74 to 81 degrees Fahrenheit (°F)) at the base of the mountain to between 17 and 20 °C (63 to 68 °F) on the mountain peaks (García-Martinó *et al.* 1996, p. 414). Mean annual rainfall ranges from approximately 245 cm/year (96 in/year) at lower elevations to approximately 400 cm/year (157 in/year) at higher elevations (Brown *et al.* 1983, p. 11). The EYNF contains five of the six Holdridge Life Zones found in Puerto Rico (Ewel and Whitmore 1973, pp. 32–49). These five zones are the lower montane wet forest, lower montane rain forest, subtropical moist forest, subtropical wet forest, and subtropical rain forest. In 1951, Wadsworth recognized four major forest types at EYNF: Dwarf, Palo Colorado, Tabonuco, and Sierra Palm (Anadón-Irizarry 2006, p. 9).

At EYNF, the elfin-woods warbler was originally discovered in the Dwarf forest (Kepler and Parkes 1972, pp. 3–5). This forest type falls within the lower montane rain forest life zone (Ewel and Whitmore 1973, p. 49) and occupies 368 ha (909 ac) of EYNF (Weaver 2012, p. 5). It is found on exposed peaks with short, stunted vegetation above 900 m (2,952 ft) elevation (Weaver 2012, p. 58). In general, the Dwarf forest is not well populated with birds (Snyder *et al.* 1987, p. 61).

Later, the species was documented at lower elevations in the Palo Colorado, Tabonuco, and Sierra Palm forests (Wiley and Bauer 1985, pp. 12–18). The Palo Colorado forest occurs within the lower montane rain forest life zone, between approximately 600 and 900 m (1,968 and 2,952 ft) (Weaver 2012, p. 1). This forest type covers about 3,441 ha (8,502 ac) of the EYNF (Weaver 2012, p. 5). This forest is mainly composed of fast-growing trees with height not more than 24 m (78 ft) (Lugo 2005, p. 506).

The Tabonuco forest is found between 150 and 600 m (492 and 1,968 ft) elevation, and occupies 5,663 ha (13,993 ac) of the EYNF (Weaver 2012, p. 5). This forest is dominated by the Tabonuco tree (*Dacryodes excelsa*), which grows primarily on the subtropical wet forest life zones (Ewel and Whitmore 1973, p. 32). The understory of this forest is sparsely vegetated, and the canopy is rich in aerial plants (*e.g.,* bromeliads, orchids, vines, and arboreal ferns) (Ewel and Whitmore 1973, p. 32).

The Sierra Palm forest (also known as palm breaks) may reach canopy heights of 15 m (50 ft) with 17 cm (7 in) average diameters at breast height (dbh) and grows mainly on steep slopes at approximately 450 m (1,476 ft) elevation, covering about 1,838 ha (4,541 ac) of the EYNF (Weaver 2012, pp. 5 and 56). The Sierra Palm forest occurs on steep windward slopes and poorly drained riparian areas (Lugo 2005, p. 496). This forest is dominated by the Sierra palm (*Prestoea montana*) and occurs within the subtropical rain forest life zone (Ewel and Whitmore 1973, p. 4).

Maricao Commonwealth Forest and Adjacent Lands—The main population of the elfin-woods warbler in western Puerto Rico occurs within the MCF, located between the municipalities of Maricao, San Germán, Sabana Grande, and Mayagüez (Ricart-Pujals and Padrón-Vélez 2010, p. 1). This forest is currently administered by the Puerto Rico Department of Natural and Environmental Resources (PRDNER) and covers about 4,168 ha (10,543 ac) with elevations ranging between 150 and 875 m (492 and 2,870 ft) above sea level. Annual average temperature is 21.7 °C (71 °F), and annual average rainfall is 233 cm/year (92 in/year) (Silander *et al.* 1986, p. 210). Three of the six life zones reported for Puerto Rico occur on the MCF: Subtropical moist forest, subtropical wet forest, and lower montane wet forest (Ricart-Pujals and Padrón-Vélez 2010, p. 8). The habitats where the elfin-woods warbler has been found within the MCF include *Podocarpus* Forest, Exposed Woodland Forest, Timber Plantations, and Dry Slopes Forest.

The *Podocarpus* Forest occupies only 80 ha (197 ac) of the MCF and is located on the slopes and highest peaks (600–900 m (1,968–2,952 ft)) within the lower montane wet forest life zone (Department of Natural Resources (DNR) 1976, p. 185). *Podocarpus* Forest is dominated by *Podocarpus coriaceus* trees and has closed canopies and well-developed understories composed of tree ferns (*Cyathea* spp.), Sierra palms, and vines (Tossas and Delannoy 2001, pp. 47–53; Anadón-Irizarry 2006, p. 53; González 2008, pp. 15–16).

The Exposed Woodland Forest occupies 2,711 ha (6,700 ac) of the MCF and is found in valleys, slopes, and shallow soils with a more or less continuous canopy (González 2008, pp. 15–16). These forest associations are found at elevations ranging from 470 to 800 m (1,542 to 2,624 ft) within the subtropical wet forest life zone (DNR 1976, p. 185).

Timber Plantations occupy approximately 1,111 ha (2,745 ac) of the MCF in elevations ranging from 630 to 840 m (2,066 to 2,755 ft) within the subtropical wet forest and the subtropical moist forest life zones (DNR 1976, p. 185). This habitat—dominated by the María trees (*Calophyllum calaba*), eucalyptus (*Eucalyptus robusta*), and Caribbean pine (*Pinus caribaea*)—was planted in areas that were completely deforested for agriculture (Delannoy 2007, p. 9; González 2008 p. 5).

Dry Slopes Forest occupies approximately 1,367.3 ha (3,377 ac) of the MCF in elevations ranging from 120 to 300 m (394 to 984 ft) within the subtropical moist forest life zone (DNR 1976, p. 185). This habitat is found in shallow and excessively drained serpentine-derived soils dominated by xerophytic vegetation, thin trees, and a low open canopy. This forest type is more common in the southern and southeastern slopes of the MCF (DNR 1976, p. 185).

Outside the MCF, the elfin-woods warbler has been detected within secondary forests and existing shade-grown coffee plantations (González 2008, pp. 15–16). Secondary forests are found at elevations ranging from 130 to 750 m (426 to 2,460 ft), and the shade-grown coffee plantations are found at elevations ranging from 300 to 600 m (984 to 1,968 ft) (Gonzalez 2008, p. 59; Puerto Rico Planning Board 2015). Also, the elfin-woods warbler has been documented at very low densities outside the MCF in pasturelands, Gallery forests, and rural residential areas, but not in sun-grown (unshaded) coffee plantations (González 2008, pp. 15–16). Young secondary forests developed as a result of abandonment of agriculture during the 20th century. These forests are less than 25 years old with an open canopy height of 12 to 15 m (40 to 50 ft) (González 2008, p. 6) and are found within the subtropical moist and subtropical wet forest life zones (DNR 1976, p. 185). Their understories are well-developed and dominated by grasses, vines, and other early-successional species (González 2008, p. 6). Mature secondary forests are over 25 years old and develop on humid to very humid, moderate to steep slopes. They are characterized by their closed canopies, reaching heights of 20 to 30 m (66 to 100 ft), and sparse to abundant understories (González 2008, p. 6). Some of these forests were used in the past for cultivation of shade-grown coffee and survived untouched because landowners abandoned agriculture activities (Delannoy 2007, p. 10). The shade-grown coffee plantations are covered with tall mature forests dominated mostly by guaba (*Inga vera*) and guaraguao (*Guarea guidonia*) trees. Found on moderate to steep, humid mountain sides, these trees reach heights of 15 to 20 m (50 to 66 ft), and their understories constantly develop without grasses (González 2008, p. 6). Shade-grown coffee plantations are stable agro-ecosystems that provide habitat, nesting, and feeding for many native, endemic, and migratory species. Some of the best examples of this habitat are found in north, northwest, and northeast MCF (Delannoy 2007, p. 10). Studies have shown that biodiversity of plants, insects, reptiles, birds, and some mammals are higher in shade-grown than in sun-grown coffee plantations (Borkhataria *et al.* 2012, p. 165).

Carite Commonwealth Forest—The Carite Commonwealth Forest (CCF) is within the known historical range of the elfin-woods warbler; however, the species was last observed in this forest about 15 years ago (Pérez-Rivera 2014, pers. comm.). The CCF has been managed for conservation by PRDNER since 1975 (DNR 1976, p. 169). This forest covers about 2,709 ha (6,695 ac), and ranges between 620 and 900 m (2,034 and 2,952 ft) in elevation (DNR 1976, p. 169). The CCF contains four forest types: Dwarf, Palo Colorado, Plantations, and Secondary (Silander *et al.* 1986, p. 188). These forest types are similar to the forests utilized by the elfin-woods warbler in EYNF and MCF.

Although the elfin-woods warbler has not been recently observed in this forest (Anadón-Irizarry 2006, p. 54; Anadón-Irizarry 2014, pers. comm.), the habitat suitability model developed for the species (Colón-Merced 2013, p. 51) suggests CCF still provides suitable habitat for the species due to its similarity in elevation, climatic conditions, and vegetation associations with EYNF and MCF. The CCF's similarity to EYNF and MCF suggests that this forest could provide habitat for the expansion of the elfin-woods warbler's current range to maintain the species' historical, geographical, and ecological distribution.

Population Status

El Yunque National Forest—Kepler and Parkes (1972, p. 15) estimated the elfin-woods warbler population at fewer than 300 pairs occurring in 450 ha (1,111 acres) at EYNF. Waide (1995, p. 9) reported an estimated population of 138 pairs in 329 ha (812 ac) in the Dwarf forest at EYNF. According to Anadón-Irizarry (2006, p. 24), the species' mean abundance was highest (0.48 individuals (ind)/point count) in the Palo Colorado forest, slightly lower (0.42 ind/point count) in the Dwarf forest, lowest (0.01 ind/point count) in the Tabonuco forest, and none were recorded in Sierra Palm forest. Arendt *et al.* (2013, p. 8) conducted bird surveys approximately monthly from 1989 to 2006, and reported a decline of the elfin-woods warbler population in EYNF over that period of 17 years. The species showed a significant general decline from 0.2 ind/ha to 0.02 ind/ha in the Dwarf forest, and from 1 ind/ha to 0.2 ind/ha in the Palo Colorado forest (Arendt *et al.* 2013, p. 9).

Maricao Commonwealth Forest and Adjacent Lands—Cruz and Delannoy (1984, p. 92) suggested that the elfin-woods warbler was not uniformly distributed throughout the MCF and that it was found in different habitats within three studied sites. Anadón-Irizarry (2006, p. 27) conducted a survey from 2003 to 2004, in 102.4 ha (253 ac) of MCF and recorded 778 elfin-woods warblers in 18 counts for an average of

0.42 ind/ha/count. González (2008, pp. 23–28) reported the most recent population estimate for the elfin-woods warbler at the MCF and adjacent areas. González (2008, p. 18) estimated 97.67 elfin-woods warbler individuals in an area of 203.2 ha (0.48 ind/ha) within the MCF. In areas adjacent to the MCF, he estimated 43.02 individuals in an area of 374.4 ha (0.11 ind/ha).

Additionally, González (2008, p. 27) reported that the highest densities of elfin-woods warbler recorded per point-count stations in MCF were within the *Podocarpus* Forest (0.88 ind/ha). Moderate densities were recorded in Exposed Woodland (0.53 ind/ha), Timber Plantations (0.38 ind/ha), and Dry Slope Forest (0.06 ind/ha) (González 2008 p. 27). González (2008 p. 27) stated these results are similar to estimates obtained by previous studies in the same type of forests. In lands adjacent to the MCF, the shade-grown coffee plantations exhibited the highest elfin-woods warbler abundance (0.24 ind/ha) (González 2008, p. 24).

Based on the studies mentioned above, in 2010, BirdLife International estimated the overall elfin-woods warbler population in Puerto Rico to be at least 1,800 mature individuals (Arendt *et al.* 2013, p. 2).

Carite Commonwealth Forest—In 1977, Pérez-Rivera and Maldonado (1977, p. 134) reported the species for the first time in the CCF. Two years later, Pérez-Rivera (1979, pp. 5–8) indicated that the species was more common than was expected when discovered. However, he mentioned that because the species appeared to be specialized to certain types of habitats, any kind of habitat disturbance or modification would cause a rapid decline of the species (Pérez-Rivera 1979, p. 58). The species was later recorded by Pérez-Rivera during the 1980s and 1990s in the following areas: Cerro La Santa, Camino El Seis, first recreation area near the forest entrance, private land near Barrio Farallón, and Fincas Las 300 (Delannoy 2007, pp. 22–23). Based on Pérez-Rivera's observations within these areas, the species seemed to be an uncommon and rare in CCF (*i.e.,* 1 or 2 sightings every 10 visits) (Delannoy 2007, pp. 22–23). The species was later detected occasionally by Pérez-Rivera within the same areas until it was last observed by him more than 15 years ago (Pérez-Rivera 2014, pers. comm.).

The surveys conducted by Anadón-Irizarry between 2003 and 2004, and between 2012 and 2013, failed to detect the species within the CCF. The study conducted during the period of 2003–2004 (Anadón-Irizarry 2006, p. 54) included traditional areas previously searched by Pérez-Rivera, and the surveys were conducted along 5.0 km (3.1 mi) of existing trails. The most recent surveys, conducted between 2012 and 2013, avoided the use of existing trails and included nontraditional areas, but they also failed to detect the species (Anadón-Irizarry 2014, pers. comm.). However, during these surveys, the amount of surveyed area within nontraditional habitat was not significant (*i.e.,* 15 survey stations).

Although these studies failed to detect the species, Anadón-Irizarry (2006, p. 54; 2014, pers. comm.) suggested the possibility that the species is still present in isolated pockets of forest that were not searched during the studies (Delannoy 2007, p. 22). The apparent persistent and relatively sedentary behavior of this species to inhabit certain small and isolated pockets of the forest might have led these authors to suggest that it is possible that CCF may harbor undetected elfin-woods warblers (Anadón-Irizarry 2006, p. 54; Delannoy 2007, pp. 22–23; Pérez-Rivera 2014, pers. comm.). Anadón-Irizarry (2006, p. 54), Delannoy (2007, pp. 22–23), and Pérez-Rivera (2014, pers. comm.) have suggested that the species was extirpated from the traditional areas searched by them during the 1980s, 1990s, and between 2003 and 2004 due to habitat modification activities (*i.e.,* transmission antenna development and road development) that occurred in those years. If this is the case, a comprehensive assessment of the status of this population would require extensive searches covering a much larger area into the fragmented landscape of the CCF (Delannoy 2007, pp. 22–23). Therefore, during early 2016 the Service contracted for a survey to include traditional and nontraditional areas within and beyond CCF's boundaries. A total of 60 sites were surveyed between March and April 2016 using ARBIMON portable recorders (Aide and Campos 2016). Surveyed areas also included suitable habitat identified by the habitat suitability model developed by Colón-Merced (2013). None of the 23,944 1-minute recordings analyzed for the presence of the elfin-woods warbler resulted in positive detection, indicating the species is not present in CCF (Aide and Campos 2016).

Summary of Factors Affecting the Species

Section 4 of the Act, and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

Listing actions may be warranted based on any of the above threat factors, singly or in combination.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The majority of extant elfin-woods warbler populations are restricted to two disjunct primary habitats in montane forests at EYNF and at MCF and private lands adjacent to MCF. Although the elfin-woods warbler has not been recently observed in CCF, this forest and adjacent lands still contains suitable habitat for the species. The elfin-woods warbler needs suitable forested habitats for essential behaviors such as foraging, breeding, and sheltering (Anadón-Irizarry 2006, pp. 5–8).

In the past, the majority of the forested areas in Puerto Rico—EYNF, MCF, and CCF—were impacted by agricultural practices; extraction of timber for construction and charcoal (Dominguez-Cristobal 2000, pp. 370–373; Dominguez-Cristobal 2008, pp. 100–103); development of infrastructure for utilities and communications; and construction of roads, recreational facilities, and trails, negatively affecting elfin-woods warbler habitat (DNR 1976, p. 169; Waide 1995, p. 17; Delannoy 2007, p. 4; Anadón-Irizarry 2006, p. 28; Pérez-Rivera 2014, pers. comm.). Currently, each agency manages these forests for conservation purposes under its authorities and mandates to promote habitat conservation (see *Factor D. The Inadequacy of Existing Regulatory Mechanisms,* below); habitat modification pressures from agriculture practices and the development of new infrastructure within the forests are currently very low. However, typical forest management of existing disturbed areas (*e.g.,* trail maintenance, road maintenance, transmission antenna maintenance, and recreational facility improvements) and research activities (*e.g.,* species surveys, endangered species reintroductions) still occur within these forests. The maintenance performed on roads, trails, transmission antenna facilities, and recreational facilities is not presently affecting elfin-woods warbler habitat within these forests. When a management or research activity is conducted, both USFS and PRDNER closely coordinate with the Service during design and planning stages. These planning efforts minimize possible adverse effects on the species and its habitat. In contrast, the expansion of existing facilities (*i.e.*, transmission antennas, access roads, access gates, administration buildings, utilities) within the forests is still a possibility and may result in the degradation of suitable habitat of elfin-woods warbler.

Although the threats to the species and its habitat have been minimized within the lands managed and administrated by USFS and PRDNER within EYNF, MCF, and CCF, respectively, the species is still also threatened with habitat destruction, fragmentation, and degradation in 15 percent of its suitable occupied habitat within private lands adjacent to MCF. These private lands are known to be susceptible to habitat modification caused by unsustainable agricultural practices and other land uses requiring vegetation clearance (*e.g.*, deforestation, monoculture of minor fruits, livestock related activities, human-induced fires, residential use, road improvements). Although not known to be currently occupied, the areas outside EYNF and CCF are also vulnerable to these threats because they are not within the protected lands. In the Municipality of Maricao, the Puerto Rico Department of Agriculture (PRDA) has identified 301 properties (8,442 acres) with potential to be developed as agricultural lands for coffee and citrus plantations (Resolución Conjunta del Senado 2014, p. 2). Although the conversion of forested areas to sun-grown coffee plantations is still occurring on private lands adjacent to MCF, the magnitude of this activity is localized and at a lower level than it was in the past. However, PRDA has expressed its intention to increase the acreages of coffee plantations in Puerto Rico to 16,000 acres by 2016 (PRDA 2015, no page number). PRDA's goal is to provide incentives to landowners (*i.e.*, $1,300/acre) for the establishment of new planting areas of sun-grown or partially shaded coffee (*i.e.*, 1,000 coffee trees per acre) (Regulation 6372, p. 3–6; Regulation Governing the Incentives Programs of the Coffee Production Industry in Puerto Rico). Some of these areas, previously used for agriculture, were abandoned and are currently forested. The majority of the sun-grown coffee plantations were converted several decades ago, resulting in the elimination of native forest, thus reducing the habitat value for wildlife, including the elfin-woods warbler (Delannoy 2007, p. 20). The most recent studies conducted in MCF and adjacent lands (*i.e.*, Delannoy 2007, p. 15; González 2008, p. 59) did not detect elfin-woods warblers in sun-grown coffee plantations on privately owned lands adjacent to the forest. The establishment of a sun-grown coffee plantation requires the deforestation of the area, removing habitat that elfin-woods warblers are or could be using.

The increase of urban development in private lands adjacent to EYNF and CCF has negatively affected elfin-woods warbler suitable habitat around these forests. Gould *et al.* (2007, pp. 29–31) suggested there is an increasing urbanization trend of the limited land area of eastern Puerto Rico where these forests are located. Urban development in this region increased more than 15 percent between 1991 and 2003 (Gould *et al.* 2007, pp. 29–31). Martinuzzi *et al.* (2007, pp. 294–296) reported that almost 52 percent of the island is classified under either "Urban" use (*i.e.*, 16 percent; 142,562 ha) or "Densely Populated Rural" use (*i.e.*, 36 percent; 320,219 ha) classes. The Urban-use class enhances the contiguity between the compact urban areas across the island, and gives an accurate view of how an "urban ring" encircles interior mountainous and protected areas like EYNF and CCF (Martinuzzi *et al.* 2007, p. 294). The Densely Populated Rural-use class surrounds the urban-use areas and represents most of the territory where human developments expand out from the urban centers following secondary routes (Martinuzzi *et al.* 2007, p. 294). Although the most evident land-use changes in the last 25 years have been the intensification of urbanization that surrounds these forests (Helmer 2004, pp. 33–35, Gould *et al.* 2007, pp. 29–31, Martinuzzi *et al.* 2007, p. 294), it is not known how much of these lands currently contain habitat suitable for the elfin-woods warbler.

Conservation Efforts To Reduce the Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In 2014, the Service developed a candidate conservation agreement (CCA) with USFS and PRDNER to promote the conservation of the elfin-woods warbler. The purpose of the CCA is to implement measures to conserve, restore, and improve the elfin-woods warbler's habitat and populations within EYNF and MCF (Service 2014, p. 6). The CCA provides that PRDNER and USFS will promote, develop, and implement the best management practices to avoid any potential threat to suitable and occupied elfin-wood warbler habitat and populations. It also provides that both agencies will implement restoration and habitat enhancement efforts within degraded areas of EYNF and MCF. The agencies will also (1) determine the habitat use, movement, and activity patterns of the species; (2) design and establish long-term population monitoring programs; and (3) develop outreach and education programs to improve mechanisms to promote habitat conservation and restoration within private lands adjacent to both forests.

Although the elfin-woods warbler also occurs on privately owned lands adjacent to MCF that are not covered by the CCA, these areas are part of a habitat restoration initiative in southwestern Puerto Rico implemented by the Service since 2010, through the Partners for Fish and Wildlife (PFW) and Coastal (CP) Programs. The PFW and CP are voluntary programs that provide technical and financial assistance to landowners to implement restoration and conservation practices on their lands for a particular amount of time. These programs promote the restoration of degraded habitat that was likely occupied by the species before the conversion to agricultural lands and that may be restored as suitable elfin-woods warbler habitat in the future. In some cases, occupied suitable habitat for the species is enhanced and protected through cooperative agreements with the private landowners.

Between 2010 and 2014, a total of 522 ha (1,290 acres) of degraded tropical upland forest and 21 km (13 miles) of riparian buffers have been restored and conserved through these programs in collaboration with the Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), PRDNER, Envirosurvey Inc. (a local nongovernmental organization), and other partners. Although this initiative promotes the restoration and enhancement of degraded habitat adjacent to the MCF and may potentially provide suitable habitat for the elfin-woods warbler, challenges such as limited resources and uncertainty about landowner participation may affect the implementation of management practices that mitigate impacts of agricultural practices.

Summary of Factor A

The elfin-woods warbler's restricted distribution makes it vulnerable to habitat destruction and modification.

The majority of extant elfin-woods warbler populations occur on public lands managed for conservation purposes where activities that may affect the species or its habitat are regulated, and measures to minimize or avoid those impacts are being implemented based on management plans or agencies' management mandates. The elfin-woods warbler has been reported on private lands only outside MCF. Private lands adjacent to EYNF have not been surveyed, and recent surveys conducted within the CCF and adjacent private lands did not detect the elfin-woods warbler (Aide and Campos 2016). Nonetheless, the agricultural activities and development projects on private lands adjacent to EYNF, MCF, and CCF may result in the loss or fragmentation of habitat that may be suitable for the species as has been suggested by some researchers. Therefore, we believe that habitat curtailment or modification is a threat to the elfin-woods warbler.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Based on the available information, overutilization has not been documented as a threat to the elfin-woods warbler.

Factor C. Disease or Predation

Delannoy (2009, p. 2) indicated that the Puerto Rican sharp-shinned hawk (*Accipiter striatus venator*) infrequently preys on the elfin-woods warbler. Other potential elfin-woods warbler nest predators may include the pearly-eyed thrasher, Puerto Rican tanager, Puerto Rican screech owl, Puerto Rican boa, Puerto Rican racer, and feral cat (Delannoy 2009, p. 2). Additionally, Arroyo-Vázquez (1992, p. 364) noted that the Indian mongoose and black rat are potential egg and nestling predators. Nonetheless, we are not aware of any scientific or commercial information that predation of elfin-woods warblers is having an adverse effect on the species, and therefore we believe that predation is not a threat to the elfin-woods warbler. Similarly, we have no evidence of any disease affecting the species.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

In 1999, the Commonwealth of Puerto Rico approved Law No. 241–1999, known as the New Wildlife Law of Puerto Rico (*Nueva Ley de Vida Silvestre de Puerto Rico*). The purpose of this law is to, among other things, protect, conserve, and enhance both native and migratory wildlife species; declare as property of Puerto Rico all wildlife species within its jurisdiction; issue permits; regulate hunting activities; and regulate exotic species. In 2004, the Commonwealth of Puerto Rico approved the Regulation Governing the Management of Vulnerable and Endangered Species on the Commonwealth of Puerto Rico (Regulation 6766; *Reglamento para Regir el Manejo de las Especies Vulnerables y en Peligro de Extinción en el Estado Libre Asociado de Puerto Rico*). Regulation 6766 prohibits collecting, killing, or harming species listed under Territorial law, as well as possessing, transporting, or selling items derived from listed species, and requires authorization from the PRDNER Secretary for any action that may affect designated critical habitat of listed species under this regulation (Departamento de Recursos Naturales y Ambientales 2004, pp. 9, 18). In 2004, the Commonwealth of Puerto Rico included the elfin-woods warbler in Regulation 6766 as a "vulnerable species" (a species that, although is not listed as endangered or critically endangered, faces a high risk of extinction in a foreseeable future).

In addition to laws that specifically protect the elfin-woods warbler, MCF and CCF are protected under Puerto Rico's Forests Law (Law No. 133–1975; *Ley de Bosques de Puerto Rico*), as amended in 2000, which prohibits causing damage to and collection of flora and fauna in public forests. Moreover, all Commonwealth forests are designated as Critical Wildlife Areas (CWA) by PRDNER. The CWA designation constitutes a special recognition by this agency with the purpose of providing information to other Commonwealth and Federal agencies about the conservation needs of these areas, and assisting permitting agencies in precluding negative impacts as a result of permit approvals or endorsements (PRDNER 2005, p. 6).

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712) provides protection for the elfin-woods warbler, which is defined as a migratory bird under the MBTA. The MBTA makes it unlawful to pursue; hunt; take; capture; kill; attempt to take, capture, or kill; possess; offer for sale; sell; offer to barter; barter; offer to purchase; purchase; deliver for shipment; ship; export; import; cause to be shipped, exported, or imported; deliver for transportation; transport or cause to be transported; carry or cause to be carried; or receive for shipment, transportation, carriage, or export, any migratory bird, or any part, nest, or egg of such bird, or any product, whether or not manufactured, which consists of, or is comprised in whole or part, of any such bird, or any part, nest, or egg thereof. However, no provisions in the MBTA prevent habitat destruction unless direct mortality or destruction of active nests occurs.

Finally, the elfin-woods warbler co-occurs with other species that are listed under the Act. In the EYNF, the species co-occurs with the Puerto Rican sharp-shinned hawk (*Accipiter striatus venator*), Puerto Rican boa, Puerto Rican broad-winged hawk (*Buteo platypterus brunnescens*), Puerto Rican parrot (*Amazona vittata*), and several federally listed plants: *Styrax portoricensis,* uvillo (*Eugenia haematocarpa*), *Lepanthes eltoroensis,* chupacallos (*Pleodendron macranthum*), capa rosa (*Callicarpa ampla*), palo colorado (*Ternstroemia luquillensis*), *Ternstroemia subsessilis,* and *Ilex sintenisii.* In the MCF, the species co-occurs with the Puerto Rican sharp-shinned hawk, Puerto Rican boa, and several federally listed plants: *Cranichis ricartii, Gesneria pauciflora,* palo de rosa (*Ottoschulzia rhodoxylon*), palo colorado (*Ternstroemia luquillensis*), higuero de sierra (*Crescentia portoricensis*), and *Cordia bellonis.* Because of the occurrence of these federally listed species within the same habitat where the elfin-woods warblers occurs, any Federal action, funding, or permit within these forests or in private lands adjacent to these forests that may affect these listed species requires a section 7 consultation under the Act. Therefore, the elfin-woods warbler may benefit from indirect protection of these listed species (*i.e.,* implementation of habitat restoration practices and habitat protection).

Summary of Factor D

Based on the information currently available to us, the Federal and Commonwealth regulatory mechanisms are being implemented and are functioning as designed. Lack of enforcement of these laws and regulations has not been identified as having a negative impact to the species or exacerbating other negative effects to the species. Therefore, we do not find existing regulations to be inadequate.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Hurricanes and the Effects of Climate Change

The geographic location of islands in the Caribbean Sea makes them prone to hurricane impacts (Wiley and Wunderle 1993, p. 320). In fact, the frequency of hurricane occurrences is higher in the southeastern United States and the Caribbean than other regions of the world (Wiley and Wunderle 1993, p. 320). Hurricanes can have both direct and indirect effects on bird populations, which may determine the characteristics of local avifauna (Wauer and Wunderle 1992, p. 656; Wunderle *et al.* 1992, p. 323). Arendt *et al.* (2013, p. 2) suggested that catastrophic weather events such as hurricanes can negatively affect the elfin-woods warbler due to its restricted distribution and low number of individuals. Some species may cope with hurricane-induced changes by selecting different prey items, while others may switch their foraging behavior and locations (Wauer and Wunderle 1992, p. 657; Wunderle *et al.* 1992, pp. 323–326).

The frequency of hurricane-induced damage equivalent to F3 (severe) on the Fujita scale (Fujita 1971) is at least three times greater in the northeastern quadrant of Puerto Rico, where EYNF and CCF are located, compared to the rest of the island (White *et al.* 2014, p. 30). In contrast, the western side of Puerto Rico, where MCF is located, is subject to different hurricane trajectories and risks than the eastern portion of the island (White *et al.* 2010, p. 16). For example, in 1998, Hurricane Georges struck MCF, which previously had been spared from hurricanes since 1932 (Tossas 2006, p. 81). Hence, studies of the effects of hurricanes on bird populations in Puerto Rico are limited to the northeastern region and little is known about how bird species are affected elsewhere on the island (Tossas 2006, p. 81).

Delannoy (2007, p. 24) suggested that elfin-woods warbler populations at MCF appeared to be stable. However, studies conducted from 1989 to 2006 at EYNF documented a declining trend in the elfin-woods warbler population during the study period (Arendt *et al.* 2013, pp. 8–9). Arendt *et al.* (2013, p. 8) stated that this documented downward population trend could be related to intrinsic causes (*e.g.,* physiological, genetic). Nonetheless, they further suggest that it is more likely that natural habitat conversion and degradation, resulting from cyclonic events, are playing an important role in the species' decline at EYNF. Direct effects of hurricanes on habitat include massive defoliation, snapped and wind-thrown trees, massive tree mortality, and landslides (Lugo 2008, p. 368). For example, Hurricane Hugo (1989) and Hurricane Georges (1998) caused extensive damage in EYNF, which damage may have adversely impacted the elfin-woods warbler's primary habitat (Arendt *et al.* 2013, pp. 8–9). Arroyo (1991, p. 55) noted that the species was not recorded during 1990 from areas it was reported from previously at EYNF. This forest was heavily damaged by Hurricane Hugo, with more than 80 percent of the forest completely defoliated (Boucher 1990, p. 164). In contrast, at the MCF, Arroyo (1991, pp. 55–56) recorded an apparent vertical migration pattern of the species during months of heaviest rains. Moreover, Tossas (2006, p. 84) found that the elfin-woods warbler was one of two species that recovered within a year to pre-hurricane population levels after Hurricane Georges. This finding suggested that warblers abandoned defoliated sites immediately after the hurricane and shifted to protected patches with adequate foraging substrate and prey until the defoliated sites recovered (Tossas 2006, p. 84). Arendt *et al.* (2013, p. 9) indicated that these contrasting findings may be the result of disproportionate damage caused by storms in the respective forests. Moreover, the landscape at EYNF is different from that of the MCF in that at EYNF there is no continuous forested vegetation beyond the forest boundaries mainly due to conversion of agricultural lands and lowland broadleaf forests to urbanized areas (Lugo *et al.* 2004, p. 29). Therefore, the probability of dispersion to undamaged areas within and outside EYNF could be reduced for the elfin-woods warbler depending on the damages to the vegetation. The lack of suitable habitat around the EYNF also reduces the probability of elfin-woods warbler re-colonization from the MCF, which is 150 km (93 mi) away (Arendt *et al.* 2013, p. 2).

As discussed above, Anadón-Irizarry (2006, p. 54), Delannoy (2007, p. 24), and Anadón-Irizarry (2014, pers. comm.) have suggested the elfin-woods warbler no longer exists within CCF. Pérez-Rivera (2014, pers. comm.) has suggested that the habitat modification caused by Hurricane Hugo and Hurricane Georges at CCF may have had a negative effect on the elfin-woods warbler. However, he acknowledged that before concluding the species was extirpated from the forest due to these climatological events, a formal and extensive survey should be conducted to include nontraditional areas within and outside of CCF (Pérez-Rivera 2014, pers. comm.). He suggested hurricanes might be detrimental to low densities and habitat-specialized species, but at the same time might benefit insectivorous species like the elfin-woods warbler. In 1989, a month after Hurricane Hugo, Pérez-Rivera (1991, pp. 474–475) recorded the Antillean euphonia (*Euphonia musica*) shifting its feeding and foraging behavior in CCF as a result of the habitat disturbance following the hurricane. Some authors (*i.e.,* Wauer and Wunderle 1992, p. 657; Wunderle *et al.* 1992, pp. 323–326) have suggested that the frequency of hurricanes in the Caribbean may be determining some of the characteristics of the local avifauna, such as the shifting into new habitats due to hurricane-induced changes.

Hurricanes can have positive effects on forest and bird ecology by temporarily increasing forest productivity (Wiley and Wunderle 1993, p. 337), particularly for species with ample distribution (White *et al.* 2014, p. 31). However, the immediate negative effects of these powerful atmospheric events for a species with demographically vulnerable populations, such as the elfin-woods warbler, outweigh the benefits accrued via short-term primary productivity of vegetation (White *et al.* 2014, p. 31). This might explain the declining elfin-woods warbler population trend documented by Arendt *et al.* (2013, pp. 8–9) at EYNF.

Studies predict an increase in hurricane intensity in the Atlantic, with higher wind speeds and greater amounts of precipitation, but a reduction in the overall number of storms (Jennings *et al.* 2014, p. 8). As mentioned above, hurricanes may result in direct negative effects to the species and its habitat.

Based on the above information, it is possible that the elfin-woods warbler could experience local extinction due to these catastrophic weather events. While the species appears to have the ability to temporarily move to undisturbed areas and survive in MCF, such dispersal ability has not been documented at EYNF. Having two geographically separate populations on both ends of Puerto Rico may benefit the elfin-woods warbler since, based on the history of hurricanes striking the island, it is unlikely for both EYNF and MCF to be impacted by the same weather system at once. However, the fact that there are only two known populations left makes the species more vulnerable to extinction if one is lost due to a catastrophic weather event. It is important to note, however, that there are no specific studies corroborating hurricanes as a main cause of elfin-woods warbler population declines at EYNF and MCF, nor that hurricanes caused the apparent extirpation of the species from CCF.

Regarding climate, general long-term changes have been observed, including changes in amount of precipitation, wind patterns, and extreme weather events (*e.g.,* droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones) (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 30). For example, projected decreases in precipitation in the Caribbean suggest drier wet seasons, and even drier dry seasons (Jennings *et al.* 2014, p. 1).

As previously mentioned, the elfin-woods warbler is currently known only from specific habitat types at EYNF and MCF, which makes the species susceptible to the effects of climate change. It has been stated that higher temperatures, changes in precipitation patterns, and any alteration in cloud cover will affect plant communities and ecosystem processes in EYNF (Lasso and Ackerman 2003, pp. 101–102). In fact, the distribution of tropical forest life zones in the Caribbean is expected to be altered due to both intensified extreme weather events and progressively drier summer months (Wunderle and Arendt 2011, p. 44). At EYNF, such alteration may allow low-elevation Tabonuco forest species to colonize areas currently occupied by Palo Colorado forest (Scatena and Lugo1998, p. 196). Dwarf forests at EYNF also are very sensitive to the effects of climate change because of their occurrence in narrowly defined environmental conditions (Lasso and Ackerman 2003, p. 95). Dwarf forest epiphytes may experience moisture stress due to higher temperatures and less cloud cover with a rising cloud base, affecting epiphyte growth and flowering (Nadkarni and Solano 2002, p. 584). As previously mentioned, both the Palo Colorado and Dwarf forests have been reported to have the highest elfin-woods warbler mean abundance (Anadón-Irizarry 2006, p. 24). Although the available information predicting changes in habitat due to the effects of climate change pertains to EYNF, similar changes would be expected for the MCF and CCF, which lies within two of the same life zones as EYNF.

As indicated above, such climate changes are likely to alter the structure and distribution of the habitat used by the elfin-woods warbler. According to Arendt *et al.* (2013, p. 9), approximately 50 percent of the Caribbean birds show medium to high vulnerability to the effects of climate change. Based on that information, species that are dependent on specific habitat types, and that have limited distribution or have become restricted in their range, like the elfin-woods warbler, will be most susceptible to the effects of climate change. However, while continued change is expected, the magnitude and rate of that change is unknown in many cases. In tropical and subtropical forests, significant knowledge gaps exist in predicting the response of natural systems to the effects of climate change, and uncertainties exist with studies forecasting trends in climate (Jennings *et al.* 2014, p. 33). Moreover, regionally downscaled climate models projecting temperature and precipitation patterns at fine scales are not readily available for locations within the Caribbean region, including Puerto Rico (Jennings *et al.* 2014, p. 33). While existing large-scale global climate models are useful in determining potential future trends (Angeles *et al.* 2007, p. 556), the lack of fine-scale data in Puerto Rico's mountainous regions is especially troublesome, as variations in climate with elevation over short horizontal distances cannot be captured by existing climate models, especially in predictions of extreme events (Meehl *et al.* 2007, p. 477).

Human-Induced Fires

Fires are not part of the natural processes for subtropical and moist forests in Puerto Rico (Santiago-Garcia *et al.* 2008, p. 604). In fact, Méndez-Tejeda *et al.* (2015, p. 363) concluded that the majority of forests fires in Puerto Rico are produced by human actions. However, as annual rainfall decreases over time in the Caribbean region, longer periods of drought are expected in the future (Breshears *et al.* 2005, pp. 146–147; Larsen 2000, pp. 510–512). In 2000, Flannigan *et al.* (2000, pp. 225–226) projected an increase of the global fire occurrence over the next century due to the effects of climate change. In Puerto Rico, historical evidence suggests fire frequency is increasing (Burney *et al.* 1994, p. 277; Robbins *et al.* 2008, pp. 530–531). Moreover, the interactions between climate warming and drying, and increased human development, are considered to have the potential to increase the effects of fires (Robbins *et al.* 2008, pp. 530–531).

In EYNF, CCF, and adjacent lands, fires are not considered common. The tropical rain and moist forest conditions of EYNF and CCF (*i.e.,* average annual rainfall of 304.8 cm (120 in) or more) and the very high humidity during most of the year are not conditions conducive to fires as they are in the dry, temperate climates encountered in other regions. The last fire incident in EYNF, recorded in 1994, was categorized as a "minimal fire" that was quickly controlled by USFS staff (USFS 2015, no page number). In the CCF area, fires are considered human-induced and occur in a low frequency along the road PR–184 (Monsegur 2015, pers. comm.). Although the road-side fires are considered minimal, they have the potential to extend to forested lands within CCF and adjacent private lands affecting suitable elfin-woods warbler habitat.

In the Maricao area (*i.e.,* Municipalities of Sabana Grande and San Germán), fires occur more frequently on the southern dry slopes of MCF and adjacent private lands, particularly during the dry season (Avila 2014, pers. comm.). Human-induced fires modify the landscape and ecological conditions of the habitat by promoting growth of nonnative trees and grasses (Brandeis and Woodall 2008, p. 557). These landscape modifications may reduce the quality and quantity of potential elfin-woods warbler habitat. Moreover, these fires alter the habitat, decreasing the ability of the species to disperse to other forested habitats. Although the primary habitat for the species in MCF (*i.e., Podocarpus* forest) (González 2008, pp. 20–21) is not prone to fire disturbance because it is located on the highest peaks within the lower montane wet forest life zone, suitable habitat at lower elevations might be in danger if these fires extend to forested lands within the forest or private lands. Severe fires in moist tropical forests have the potential to alter microclimates, allowing atypical forest species to invade, increasing the chance of recurrent fires (Sherman *et al.* 2008, p. 536).

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting the Continued Existence of the Species

As discussed under Factor A above, the Service, USFS, and PRDNER signed a CCA in 2014, to implement strategic conservation actions. In the context of Factor E, these actions include the development and implementation of programmatic reforestation and habitat enhancement efforts within areas degraded by hurricanes to improve the recovery of the elfin-woods warbler within EYNF and MCF (Service 2014, pp. 18–19). Additionally, the CCA will help develop and design studies to gather information on the elfin-woods warbler (*e.g.,* habitat needs, habitat use, movement and activity patterns, responses to biotic and abiotic factors, and genetic variation) in order to better design and implement conservation strategies for the recovery of the species.

Summary of Factor E

Based on the information available and limited distribution of the elfin-woods warbler, we believe that this species is currently threatened by natural or manmade factors such as hurricanes and human-induced fire. The effects of climate change may exacerbate these threats by increasing intensity and frequency of hurricanes and environmental effects, although information is lacking on the specific extent of these effects. Thus, we consider these other natural and manmade factors to be threats to this species.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to elfin-woods warbler. Current available information indicates that the elfin-woods warbler has a limited distribution, with only two known populations occurring within EYNF and MCF, including the private lands adjacent to MCF, and at least one possibly extirpated population from CCF. As discussed in the Summary of Factors Affecting the Species section of this rule, threats to the elfin-woods warbler include loss, fragmentation, and degradation of habitat on private lands adjacent to MCF (Factor A). Some of these lands are subjected to habitat modification caused by unsustainable agricultural practices (*i.e.*, sun-grown coffee plantations), small residential development, and livestock related activities. Moreover, the increase of urban development on private lands adjacent to EYNF and CCF has also negatively affected suitable elfin-woods warbler habitat around these forests. The activities result in the elimination of native forest, thus reducing the suitable habitat available and the habitat value for the elfin-woods warbler.

Other natural or manmade factors (*i.e.*, hurricanes, the effects of climate change, human-induced fires; Factor E) also have been identified as threats to the species. There are only two known remaining populations making the species more vulnerable to extinction if one population is lost due to a catastrophic weather event. The effects of climate change also are expected to alter the structure and distribution of the habitat used by the elfin-woods warbler, which may be particularly susceptible because of the limited distribution and specific forest types used by the species. Human-induced fires have been reported in the Maricao area mostly within the lower southern slopes of the MCF and adjacent private lands, particularly during the dry season, and occasionally in the CCF area. Habitat disturbance caused by human-induced fires may also affect the ability of the species to disperse to other forested habitats.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that the elfin-woods warbler is not presently in danger of extinction throughout its entire range based on the low to moderate severity and non-immediacy of threats currently impacting the species. The available information indicates that elfin-woods warbler populations appear to be stable in MCF and that there are no immediate threats precipitating a demographic decline of the elfin-woods warbler in that forest. In Maricao, the species has been reported adjacent to the Commonwealth forest in shade-grown coffee plantations, demonstrating that the species may tolerate some degree of habitat disturbance. At EYNF, the most current information reported a declining trend of the elfin-woods warbler population, mainly attributed to hurricanes striking that forest. However, there are no specific studies corroborating that hurricanes are in fact the main cause of elfin-woods warbler population declines at EYNF and other factors may be influencing the decline (*e.g.*, population low densities and patchy spatial arrangement). Although the species appears to be stable at the MCF, it may be declining at EYNF and extirpated from CCF. The cumulative effects of habitat modification by human actions (*e.g.*, unsustainable agricultural practices) and natural events such as hurricanes would make the two known populations more vulnerable to extinction due to their restricted distribution, limited population numbers, and specific ecological requirements. Therefore, on the basis of the best available scientific and commercial information, we list the elfin-woods warbler as threatened in accordance with sections 3(20) and 4(a)(1) of the Act. We find that an endangered species status is not appropriate for elfin-woods warbler because the species is not currently in imminent danger of extinction throughout all of its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The plan may be revised to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be made available on our Web site (*http://www.fws.gov/endangered*), or from our Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners.

Examples of recovery actions include habitat restoration (*e.g.*, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the Commonwealth of Puerto Rico would be eligible for Federal funds to implement management actions that promote the protection or recovery of the elfin-woods warbler. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7 (a)(1) of the Act directs all Federal agencies to "utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of" endangered and threatened species. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require consultation as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the USFS; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

4(d) Rule

Under section 4(d) of the Act, the Service has discretion to issue regulations that we find necessary and advisable to provide for the conservation of threatened wildlife. We may also prohibit by regulation, with respect to threatened wildlife, any action prohibited by section 9(a)(1) of the Act for endangered wildlife. 50 CFR 17.31(a) applies all the general prohibitions for endangered wildlife set forth at 50 CFR 17.21 to threatened wildlife; 50 CFR 17.31(c) states that whenever a 4(d) rule applies to a threatened species, the provisions of § 17.31(a) do not apply to that species. Permit provisions for threatened species are set forth at 50 CFR 17.32.

Some activities that would normally be prohibited under 50 CFR 17.31 and 17.32 will contribute to the conservation of the elfin-woods warbler because habitats within some of the physically degraded private lands adjacent to elfin-woods warbler existing populations must be improved before they are suitable for the species. Therefore, for the elfin-woods warbler, the Service has determined that species-specific exceptions authorized under section 4(d) of the Act are necessary and advisable to promote the conservation of this species.

As discussed above in the Summary of Factors Affecting the Species section of this listing rule, threats to the species include loss, fragmentation, and degradation of habitat due to unsustainable agricultural practices and land use requiring vegetation clearance. Agricultural practices occurring on private lands adjacent to MCF, especially those involving habitat modification (*e.g.*, deforestation and conversion of shade-grown coffee to sun-grown coffee plantations), can result in vegetation removal and habitat alteration, thereby degrading habitats used by the elfin-woods warbler for feeding, sheltering, and reproduction.

The private lands surrounding MCF are considered the most active coffee production lands in Puerto Rico. Sun-grown coffee plantations adjacent to MCF were converted several decades ago, resulting in the elimination of native forest overstory, reducing the habitat value for wildlife, including the elfin-woods warbler. Although the majority of the coffee-related agricultural lands were converted to sun-grown coffee plantations, several parcels of land surrounding MCF are currently part of a multi-agency habitat restoration initiative in southwestern Puerto Rico implemented by the Service and NRCS since 2010, through the PFW, CP, and U.S. Department of Agriculture Farm Bill Programs. Activities that improve or restore physical habitat quality, such as the conversion of sun-grown coffee to shade-grown coffee, reforestation with native trees, riparian buffering, and forested habitat enhancement (*i.e.*, exotic species removal, and native tree planting), would have a positive effect on elfin-woods warbler populations and would provide an overall conservation benefit to the species. The NRCS conservation practices promoted under this initiative are the Multi-Story Cropping (Practice 379) and Tree/Shrub Establishment (Practice 612) (USFWS 2011). The Multi-Story Cropping practice promotes the establishment of stands of trees or shrubs that are managed as overstory with an understory of woody and/or non-woody plants that are grown for a variety of products. The purpose of this practice is to improve crop diversity by growing mixed but compatible crops having different heights in the same area. This will improve soil quality, reduce erosion, enhance degraded areas, and provide habitat for wildlife species such as the elfin-woods warbler. The Tree/Shrub Establishment Practice promotes the establishment of woody plants by planting seedlings or cuttings, direct seeding, or natural regeneration. The purpose is to promote forest products such as timber, wildlife habitat, long-term erosion control, and improvement of water quality, and to improve or restore natural diversity.

Provisions of the 4(d) Rule

Under this 4(d) rule, all of the prohibitions set forth at 50 CFR 17.31 and 17.32 apply to the elfin-woods warbler, except that incidental take caused by the following activities conducted within habitats currently occupied by the elfin-woods warbler on private, Commonwealth, and Federal lands would not be prohibited, provided those activities both abide by the conservation measures in the rule and are conducted in accordance with applicable Commonwealth, Federal, and local laws and regulations:

(1) The conversion of sun-grown coffee to shade-grown coffee plantations by the restoration and maintenance (*i.e.*, removal of invasive, exotic, and feral species; shade and coffee tree seasonal pruning; shade and coffee tree planting and replacement; coffee bean harvest by

hands-on methods; and the use of standard pest control methods and fertilizers within the plantations) of shade-grown coffee plantations and native forests associated with this type of crop. To minimize disturbance to the elfin-woods warbler, shade and coffee tree seasonal pruning must be conducted between September 1 and February 28, which is outside the peak of the elfin-woods warbler's breeding season. The Service considers the use of pest control methods (*e.g.,* pesticides, herbicides) and fertilizers "standard" when it is used only twice a year during the establishment period of shade and coffee trees (*i.e.,* the first 2 years). During this period, the structure of the agroforestry system is not mature enough to sustain the occurrence of elfin-woods warblers within these areas.

Once the shade-grown coffee system reaches its full functionality and structure (*i.e.,* 3 to 4 years), few or no chemical fertilizers, herbicides, or pesticides are required, and their use would be restricted under the 4(d) rule. This is the time period when the shade-grown coffee system is mature enough to support the presence of wildlife species. Researchers have found that the number of species of birds in coffee plantations with structurally and floristically diverse canopies is similar to the number of species in natural forest habitat and is higher than other agricultural landscapes without trees (Perfecto *et al.* 1996, pp. 603–605).

The restoration of agricultural lands due to the planting of native trees to provide shade to coffee trees or by selective removal of exotic species creates physically stable and suitable habitats for the elfin-woods warbler. Moreover, the cultivation of shade-grown coffee has many other ecological and human-health benefits such as the reduction of soil erosion, moderation of soil temperatures, and reduced need for fertilizers and pesticides (Borkhataria *et al.* 2012, p.168). Therefore, restoration, conservation, and protection of shade-grown coffee plantations would provide suitable habitat for the feeding, sheltering, and reproduction activities of this species and may provide habitat to promote the elfin-woods warblers' dispersal and recolonization of lands adjacent to the existing populations.

(2) Riparian buffer establishment through the planting of native vegetation and removal of exotic species may improve the habitat conditions of Gallery forests along the sub-watersheds associated with lands adjacent to the elfin-woods warbler's existing populations. Gallery forests serve as biological corridors that maintain connectivity between forested lands and associated agricultural lands, reducing the fragmentation in the landscape.

(3) Reforestation and forested habitat enhancement projects within secondary forests (*i.e.,* young and mature) that promote the establishment or improvement of habitat conditions for the species by the planting of native trees, selective removal of native and exotic trees, seasonal pruning of native and exotic trees, or a combination of these.

The intent of these exceptions is to provide incentive for landowners to carry out these activities in a manner which we believe will provide benefits to the species such as: (1) Maintaining connectivity of suitable elfin-woods warbler habitats, allowing for dispersal between forested and agricultural lands; (2) minimizing habitat disturbance by conducting certain activities outside the peak of the elfin-woods warbler's breeding season (*i.e.,* pruning between September 1 to February 28); (3) maximizing the amount of habitat that is available for the species; and (4) improving habitat quality. While these activities may cause some temporary disturbance to the elfin-woods warbler or its habitat, we do not expect these activities to adversely affect the species' conservation efforts. In fact, we expect they will have a net beneficial effect on the species.

Based on the rationale above, the provisions included in this rule authorized under section 4(d) of the Act are necessary and advisable to provide for the conservation of the elfin-woods warbler. Nothing in this 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the elfin-woods warbler.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Under regulations governing permits for threatened wildlife species, which are codified at 50 CFR 17.32, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, economic hardship, zoological exhibition, educational purposes, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act (for this species, those section 9 prohibitions that would be adopted through the 4(d) rule). The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements. This list is not comprehensive:

(1) Activities authorized, funded, or carried out by Federal or Commonwealth agencies (*e.g.,* expansion or construction of communication facilities; expansion of recreational facilities; pipeline construction; bridge construction; road rehabilitation and maintenance; expansion, construction, or maintenance of aqueduct facilities; habitat management; Federal and Commonwealth trust species reintroductions; trail maintenance; camping areas maintenance; research, repair, and restoration of landslides; etc.), when such activities are conducted in accordance with the consultation and planning requirements for listed species under section 7 of the Act; and

(2) Agricultural and silviculture practices implemented within existing agricultural lands (*i.e.,* degraded habitat not suitable for the species) other than sun- to shade-grown coffee conversion and maintenance, including herbicide, pesticide, and fertilizer use outside of coffee plantations, which are carried out in accordance with any Commonwealth and Federal existing regulations, permit and label requirements, and best management practices.

We believe the following activities may potentially result in a violation of section 9 the Act. This list is not comprehensive:

(1) Unauthorized collecting or handling of the species;

(2) Destruction/alteration/fragmentation of habitat essential to fulfilling the lifecycle of the species; and

(3) Introduction of nonnative species that compete with or prey upon the elfin-woods warbler.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. Elsewhere in this issue of the **Federal Register** we have published a proposed rule to designate critical habitat for the elfin-woods warbler.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Caribbean Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for "Warbler, elfin-woods" to the List of Endangered and Threatened Wildlife in alphabetical order under BIRDS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Warbler, elfin-woods	*Setophaga angelae*	U.S.A. (PR)	Entire	T	866	NA	17.41(e)
*	*	*	*	*	*		*

* * * * *

■ 3. Amend § 17.41 by adding paragraph (e) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(e) Elfin-woods warbler (*Setophaga angelae*). (1) *Prohibitions.* Except as noted in paragraph (e)(2) of this section, all prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to the elfin-woods warbler.

(2) *Exemptions from prohibitions.* Incidental take of the elfin-woods warbler will not be considered a violation of section 9 of the Act if the take results from any of the following when conducted within habitats currently occupied by the elfin-woods warbler provided these activities abide by the conservation measures set forth in this paragraph (e) and are conducted in accordance with applicable State, Federal, and local laws and regulations:

(i) The conversion of sun-grown coffee to shade-grown coffee plantations by the restoration and maintenance (*i.e.,* removal of invasive, exotic, and feral species; shade and coffee tree seasonal pruning; shade and coffee tree planting and replacement; coffee bean harvest by hands-on methods; and the use of standard pest control methods and fertilizers within the plantations) of shade-grown coffee plantations and native forests associated with this type of crop. To minimize disturbance to the elfin-woods warbler, shade and coffee tree seasonal pruning must be conducted between September 1 and February 28, which is the time period outside the peak of the elfin-woods warbler's breeding season. The Service considers the use of pest control methods (*e.g.,* pesticides, herbicides) and fertilizers "standard" when it is used only twice a year during the establishment period of shade and coffee trees (*i.e.,* the first 2 years). Once the shade-grown coffee system reaches its functionality and structure (*i.e.,* 3 to 4 years), little or no chemical fertilizers, herbicides, or pesticides may be used.

(ii) Riparian buffer establishment though the planting of native vegetation and selective removal of exotic species.

(iii) Reforestation and forested habitat enhancement projects within secondary forests (*i.e.,* young and mature) that promote the establishment or improvement of habitat conditions for the species by the planting of native trees, selective removal of native and exotic trees, seasonal pruning of native and exotic trees, or a combination of these.

Dated: June 6, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–14540 Filed 6–21–16; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 81, No. 120
Wednesday, June 22, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–147196–07]

RIN 1545–BH72

Deferred Compensation Plans of State and Local Governments and Tax-Exempt Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations prescribing rules under section 457 of the Internal Revenue Code for the taxation of compensation deferred under plans established and maintained by State or local governments or other tax exempt organizations. These proposed regulations include rules for determining when amounts deferred under these plans are includible in income, the amounts that are includible in income, and the types of plans that are not subject to these rules. The proposed regulations would affect participants, beneficiaries, sponsors, and administrators of certain plans sponsored by State or local governments or tax-exempt organizations that provide for a deferral of compensation. This document also provides a notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments on these proposed regulations must be received by September 20, 2016. Outline of topics to be discussed at the public hearing scheduled for October 18, 2016 at 10 a.m. must be received by September 20, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–147196–07), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday, between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–147196–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–147196–07). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under section 457, Keith Kost at (202) 317–6799 or Cheryl Press at (202) 317–4148, concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 457(a), (b), and (f) of the Internal Revenue Code (Code), as well as proposed regulations under section 457(e)(11), (e)(12), and (g)(4). Generally, if a deferred compensation plan of a State or local government or tax-exempt entity does not satisfy the requirements of section 457(b), (c), (d), and, in the case of a plan that is maintained by a State or local government, (g), compensation deferred under the plan will be included in income in accordance with section 457(f) unless the plan is not subject to section 457 or is treated as not providing for a deferral of compensation for purposes of section 457. Section 457(e) includes certain definitions and special rules for purposes of section 457 and describes certain plans that either are not subject to section 457 or are treated as not providing for a deferral of compensation under section 457.[1]

Section 457(a)(1) provides that any amount of compensation deferred under an eligible deferred compensation plan as defined in section 457(b) (an eligible plan), and any income attributable to the amounts so deferred, is includible in gross income only for the taxable year in which the compensation or other income is paid to the participant or beneficiary in the case of an eligible employer described in section 457(e)(1)(A) or is paid or otherwise made available to the participant or beneficiary in the case of an eligible employer described in section 457(e)(1)(B). An eligible employer described in section 457(e)(1)(A) means a State, a political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State (a governmental entity). An eligible employer described in section 457(e)(1)(B) means any organization other than a governmental entity that is exempt from tax under subtitle A (a tax-exempt entity).

Section 457(f)(1)(A) provides that, in the case of a plan of an eligible employer providing for a deferral of compensation, if the plan is not an eligible plan, the compensation is included in gross income when the rights to payment of the compensation are not subject to a substantial risk of forfeiture, as defined in section 457(f)(3)(B).[2] Section 457(f)(1)(B) provides that the tax treatment of any amount made available under the plan will be determined under section 72. Section 457(f)(2) provides that section 457(f)(1) does not apply to a plan that is described in section 401(a) or an annuity plan or contract described in section 403, the portion of any plan that consists of a transfer of property described in section 83, the portion of a plan that consists of a trust described in section 402(b), a qualified governmental excess benefit arrangement described in section 415(m), or the portion of any applicable employment retention plan described in section 457(f)(4).

Section 457(e)(11) provides that certain plans are treated as not providing for a deferral of compensation. These plans include any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan, as well as any plan paying solely length of service awards to certain bona fide volunteers (or their beneficiaries) and certain voluntary early retirement incentive plans.[3] Section 457(e)(12) provides that section 457 does not apply to certain nonelective deferred compensation of nonemployees.

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[1] Plans described in certain statutes that are not incorporated into the Code are not subject to section 457. See sections 1107(c)(3)(B), 1107(c)(4), and 1107(c)(5) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2494 (1986)), as amended, and sections 1101(e)(6), 6064(d)(2), and 6064(d)(3) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3342 (1988)).

[2] In Notice 2007–62 (2007–2 CB 331 (August 6, 2007)), the Treasury Department and the IRS announced the intent to issue guidance under section 457, including providing definitions of a bona fide severance pay plan under section 457(e)(11) and substantial risk of forfeiture under section 457(f)(3)(B). In response to comments received in response to a request in Notice 2007–62 (on subjects including but not limited to severance pay, covenants not to compete, and the definition of substantial risk of forfeiture), the rules in these proposed regulations have been modified from the proposals announced in that notice.

On July 11, 2003, the Treasury Department and the IRS issued final regulations under section 457 (TD 9075) (68 FR 41230) (2003 final regulations). The 2003 final regulations provide guidance on deferred compensation plans of eligible employers, including eligible plans under section 457(b). The 2003 final regulations also reflect the changes made to section 457 by the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2494), the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755), the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788), the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 38), and the Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21). The proposed amendments to the 2003 final regulations under section 457(a), (b), and (g) contained in this document include amendments to reflect subsequent statutory changes made to section 457. The following sections of this preamble provide a chronological description of the relevant changes made after the 2003 final regulations were issued. (For a summary of the proposed changes to the 2003 final regulations, see the Explanation of Provisions section of this preamble.)

I. American Jobs Creation Act of 2004

Section 885 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418), added section 409A to the Code. Section 409A generally provides that, if at any time during a taxable year a nonqualified deferred compensation plan fails to meet the requirements of section 409A or is not operated in accordance with those requirements, all amounts deferred under the plan for the taxable year and all preceding taxable years are includible in gross income to the extent the amounts are not subject to a substantial risk of forfeiture and were not previously included in gross income.

On April 17, 2007, the Treasury Department and the IRS issued final regulations under section 409A (TD 9312) at 72 FR 19234 (final section 409A regulations). The final section 409A regulations provide guidance on the definition of certain terms and the types of plans covered under section 409A, permissible deferral elections under section 409A, and permissible payments under section 409A. The final section 409A regulations provide that a deferred compensation plan of a governmental entity or a tax-exempt entity that is subject to section 457(f) may constitute a nonqualified deferred compensation plan for purposes of section 409A and that the rules of section 409A apply separately and in addition to any requirements applicable to these plans under section 457(f).

On December 8, 2008, proposed regulations under section 409A were published in the **Federal Register** (73 FR 74380) (proposed section 409A regulations) that provide guidance on the calculation of amounts includible in income under section 409A(a) and the additional taxes imposed by that section with respect to arrangements that do not comply with the requirements of section 409A(a).

In Notice 2008–62 (2008–29 IRB 130 (July 21, 2008)), the Treasury Department and the IRS provided guidance under sections 409A and 457(f) regarding recurring part-year compensation. For this purpose, recurring part-year compensation is compensation paid for services rendered in a position that the employer and employee reasonably anticipate will continue under similar terms and conditions in subsequent years, and under which the employee will be required to provide services during successive service periods each of which comprises less than 12 months (for example, a teacher providing services during a school year comprised of 10 consecutive months) and each of which begins in one taxable year of the employee and ends in the next taxable year. Notice 2008–62 provides that an arrangement under which an employee or independent contractor receives recurring part-year compensation does not provide for the deferral of compensation for purposes of section 409A or for purposes of section 457(f) if (A) the arrangement does not defer payment of any of the recurring part-year compensation beyond the last day of the 13th month following the beginning of the service period, and (B) the arrangement does not defer from one taxable year to the next taxable year the payment of more than the applicable dollar amount under section 402(g)(1)(B) ($18,000 for 2016). The notice provides that taxpayers may rely on this rule beginning in the first taxable year that includes July 1, 2008.

II. Pension Protection Act of 2006

The Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780) (PPA '06), permits a participant's designated beneficiary who is not a surviving spouse to roll over, in a direct trustee-to-trustee transfer, distributions from an eligible plan maintained by a governmental entity (an eligible governmental plan) to an individual retirement account or annuity (IRA). Section 829 of PPA '06 added section 402(c)(11) to the Code, which provides that this type of transfer is treated as an eligible rollover distribution for purposes of section 402(c).

Section 845(b)(3) of PPA '06 added section 457(a)(3) to the Code, which provides an exclusion from gross income for amounts that are distributed from an eligible governmental plan to the extent provided in section 402(l). Section 402(l) provides that distributions from certain governmental retirement plans are excluded from the gross income of an eligible retired public safety officer to the extent the distributions do not exceed the amount paid by the retired officer for qualified health insurance premiums for the year, up to a maximum of $3,000. See Notice 2007–7, part IV (2007–1 CB 395 (January 29, 2007)), as well as Notice 2007–99 (2007–2 CB 1243 (December 26, 2007)), for guidance on the application of section 402(l).

Section 1104(a)(1) of PPA '06 added section 457(e)(11)(D) to the Code, which treats applicable voluntary early retirement incentive plans as bona fide severance pay plans that do not provide for a deferral of compensation under section 457 with respect to payments or supplements that are an early retirement benefit, a retirement-type subsidy, or a social security supplement in coordination with a defined benefit pension plan. This treatment applies only to the extent the payments otherwise could have been provided under the defined benefit plan (determined as if section 411 applied to the defined benefit plan). Under section 457(e)(11)(D)(ii), an applicable voluntary early retirement incentive plan may be maintained only by a local educational agency or a tax-exempt education association.[4]

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[3] Announcement 2000–1 (2000–1 CB 294 (January 1, 2000)), provides transitional guidance on the reporting requirements for certain broad-based, nonelective deferred compensation plans maintained by State or local governments. The announcement states that, pending the issuance of further guidance, a State or local government should not report amounts for any year before the year in which a participant or beneficiary is in actual or constructive receipt of those amounts if the amounts are provided under a plan that the State or local government has been treating as a bona fide severance pay plan under section 457(e)(11) for years before calendar year 1999. To be eligible for this transitional relief, the plan must satisfy certain requirements described in the announcement.

Section 1104(b)(1) of PPA '06 added section 457(f)(2)(F) to the Code, which provides that section 457(f)(1) does not apply to an applicable employment retention plan. Under section 457(f)(4), an applicable employment retention plan is a plan maintained by a local educational agency or a tax-exempt education association to pay additional compensation upon severance from employment for purposes of employee retention or rewarding employees to the extent that the benefits payable under the plan do not exceed twice the applicable annual dollar limit on deferrals in section 457(e)(15).[5]

III. Heroes Earnings Assistance and Relief Tax Act of 2008

Section 104(c) of the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110–245 (122 Stat. 1624) (HEART Act), amended section 457 to add section 457(g)(4) regarding benefits payable upon death during qualified active military service under the Uniformed Services Employment and Reemployment Rights Act of 1994, Public Law 103–353 (108 Stat. 3149). Section 457(g)(4) provides that an eligible governmental plan must meet the requirements of section 401(a)(37). Under section 401(a)(37), a plan is not treated as a qualified retirement plan unless the plan provides that, in the case of a participant who dies while performing qualified military service, the survivors of the participant are generally entitled to any additional benefits that would have been provided under the plan if the participant had resumed and then terminated employment on account of death. Section 105(b) of the HEART Act added section 414(u)(12) to the Code, which provides rules regarding (A) the treatment of differential wage payments as compensation and (B) the treatment of service in the uniformed services (as described in section 3401(h)(2)(A)) as a severance from employment for purposes of plan distribution requirements, including the distribution requirements of section 457(d)(1)(A)(ii).

IV. Small Business Jobs Act of 2010 and American Taxpayer Relief Act of 2012

Section 2111 of the Small Business Jobs Act of 2010, Public Law 111–240 (124 Stat. 2504) (SBJA), amended section 402A of the Code to allow an eligible governmental plan to include a qualified Roth contribution program, effective for taxable years beginning after December 31, 2010. SBJA also amended section 402A to permit taxable in-plan rollovers to qualified Roth accounts under eligible governmental plans. Section 902 of the American Taxpayer Relief Act of 2012, Public Law 112–240 (126 Stat. 2313), expanded the types of amounts eligible for an in-plan Roth rollover. For guidance relating to in-plan rollovers to qualified Roth accounts, see Notice 2013–74 (2013–52 IRB 819 (December 23, 2013)) and Notice 2010–84 (2010–51 IRB 872 (July 19, 2010)).

Explanation of Provisions

I. Overview

These proposed regulations make certain changes to the 2003 final regulations under sections 457(a), 457(b), and 457(g) to reflect statutory changes to section 457 since the publication of those regulations. In addition, these proposed regulations provide guidance on certain issues under sections 457(e)(11) and 457(e)(12) that are not addressed in the 2003 final regulations and provide additional guidance under section 457(f). Consistent with the 2003 final regulations, although the rules under section 457 apply to plan participants and beneficiaries without regard to whether the related services are provided by an employee or independent contractor, these proposed regulations often use the terms employee and employer to describe a service provider and a service recipient, respectively, without regard to whether the service provider is an independent contractor.[6]

II. Regulatory Amendments To Reflect Statutory Changes to Section 457

A. Qualified Roth Contribution Program

Section 1.457–4 of the 2003 final regulations provides that annual deferrals to an eligible plan that satisfy certain requirements are excluded from the gross income of the participant in the year deferred or contributed and are not includable in gross income until paid to the participant, in the case of an eligible governmental plan, or until paid or otherwise made available to the participant, in the case of an eligible plan of a tax-exempt entity. These proposed regulations amend § 1.457–4(a) and (b) to reflect the change made by SBJA to allow an eligible governmental plan to include a qualified Roth contribution program, as defined in section 402A(c)(1), under which designated Roth contributions are included in income in the year of deferral. Consistent with section 402A(b)(2), these proposed regulations provide that contributions and withdrawals of a participant's designated Roth contributions must be credited and debited to a designated Roth account maintained for the participant, and that the plan must maintain a record of each participant's investment in the contract with respect to the account. In addition, the proposed regulations provide that no forfeitures may be allocated to a designated Roth account and that no contributions other than designated Roth contributions and rollover contributions described in section 402A(c)(3)(A) may be made to the account.

These proposed regulations also amend § 1.457–7(b)(1), which provides guidance regarding the circumstances under which amounts are included in income under an eligible governmental plan, to specify that qualified distributions from a designated Roth account are excluded from gross income.

B. Certain Distributions for Qualified Accident and Health Insurance Premiums

The proposed regulations amend the rules for the taxation of eligible governmental plan distributions under § 1.457–7(b) to reflect the change made by PPA '06 with respect to certain amounts distributed to an eligible public safety officer. The proposed regulations provide that distributions from an eligible governmental plan meeting the requirements of section

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[4] A local education agency is defined in section 9101 of the Elementary and Secondary Education Act of 1965, Public Law 89–10 (79 Stat. 27), as a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools. A tax-exempt education association is an association that principally represents employees of one or more local education agencies and is an entity described in section 501(c)(5) or (6) that is exempt from tax under section 501(a).

[5] See also section 1104(c) of PPA '06, which amended section 3(2) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829) (ERISA), to provide that applicable voluntary early retirement incentive plans and applicable employment retention plans are treated as welfare plans (and not pension plans) for purposes of ERISA.

[6] Section 457(e)(2) provides that the performance of services for purposes of section 457 includes the performance of services as an independent contractor and that the person (or governmental entity) for whom these services are performed is treated as an employer.

402(l) are excluded from gross income and are not subject to the general rule providing that amounts deferred under an eligible governmental plan are includable in the gross income of a participant or beneficiary for the taxable year in which they are paid. For this purpose, see section 402(l) for rules regarding the extent to which this income exclusion applies to a distribution (including the dollar limitation on the exclusion) and section 402(l)(4)(C) for the meaning of the term public safety officer.

C. Rules Related to Qualified Military Service

The proposed regulations amend § 1.457–2(f) to implement the requirements of section 457(g)(4), which was added by the HEART Act and which provides that an eligible governmental plan must meet the requirements of section 401(a)(37) (providing that, in the case of a participant who dies while performing qualified military service, the survivors of the participant generally are entitled to any additional benefits that would have been provided under the plan if the participant had resumed and then terminated employment on account of death). In addition the proposed regulations amend § 1.457–6(b)(1) to provide a cross reference to the rules under section 414(u)(12)(B) (providing that leave for certain military service is treated as a severance from employment for purposes of the plan distribution restrictions that apply to eligible plans).

III. Certain Plans That Are Not Subject to Section 457 or Are Not Treated as Providing for a Deferral of Compensation Under Section 457

A. In General

Section 1.457–2(k) of the 2003 final regulations defines the term plan for purposes of section 457 to include any plan, agreement, method, program, or other arrangement, including an individual employment agreement, of an eligible employer under which the payment of compensation is deferred. Section 1.457–2(k) of the 2003 regulations also identifies certain plans that are not subject to section 457 (pursuant to section 457(e)(12) and (f)(2) and statutes not incorporated into the Code) and certain plans that are treated as not providing for a deferral of compensation for purposes of section 457 (pursuant to section 457(e)(11)). These proposed regulations amend the definition of plan for purposes of section 457 to remove from § 1.457–2(k) the provisions identifying plans that are not subject to section 457 and plans that are treated as not providing for a deferral of compensation for purposes of section 457, and move the provisions regarding most of these plans to § 1.457–11 of the proposed regulations. In addition, § 1.457–11 provides additional guidance on:

- Bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, and death benefit plans, as described in section 457(e)(11)(A)(i), which are treated as not providing for a deferral of compensation for purposes of section 457; and
- plans paying solely length of service awards to bona fide volunteers (or their beneficiaries), as described in section 457(e)(11)(A)(ii), that also are treated as not providing for a deferral of compensation for purposes of section 457.[7]

The proposed regulations also provide guidance in a new § 1.457–12 on plans described in section 457(f)(2), to which section 457(f)(1) does not apply.

B. Bona Fide Severance Pay Plans

1. General Requirements

The proposed regulations provide that a plan must meet certain requirements to be a bona fide severance pay plan that is treated under section 457(e)(11)(A)(i) as not providing for the deferral of compensation (and therefore not subject to section 457). First, the benefits provided under the plan must be payable only upon a participant's involuntary severance from employment or pursuant to a window program or voluntary early retirement incentive plan. Second, the amount payable under the plan with respect to a participant must not exceed two times the participant's annualized compensation based upon the annual rate of pay for services provided to the eligible employer for the calendar year preceding the calendar year in which the participant has a severance from employment (or the current calendar year if the participant had no compensation from the eligible employer in the preceding calendar year), adjusted for any increase in compensation during the year used to measure the rate of pay that was expected to continue indefinitely if the participant had not had a severance from employment. Third, pursuant to the written terms of the plan, the severance benefits must be paid no later than the last day of the second calendar year following the calendar year in which the severance from employment occurs. The rules in these proposed regulations for severance pay plans are similar to the rules for separation pay plans in § 1.409A–1(b)(9) of the final section 409A regulations.

2. Involuntary Severance From Employment

a. In General

The proposed regulations require that benefits under a bona fide severance pay plan be payable only upon an involuntary severance from employment or pursuant to a window or voluntary early retirement incentive program. For this purpose, an involuntary severance from employment is a severance from employment due to the eligible employer's independent exercise of its authority to terminate the participant's services, other than due to the participant's implicit or explicit request, if the participant is willing and able to continue to perform services. The determination of whether a severance from employment is involuntary is based on the relevant facts and circumstances. If a severance from employment is designated as an involuntary severance from employment, but the facts and circumstances indicate otherwise, the severance from employment will not be treated as involuntary for purposes of section 457.

b. Severance From Employment for Good Reason

The proposed regulations provide that an employee's voluntary severance from employment may be treated as an involuntary severance from employment for purposes of section 457 if the severance from employment is for good reason. A severance from employment is for good reason if it occurs under certain bona fide conditions that are pre-specified in writing under circumstances in which the avoidance of section 457 is not the primary purpose of the inclusion of these conditions in the plan or of the actions by the employer in connection with the satisfaction of those conditions. Notwithstanding the previous sentence, once the bona fide conditions have been established, the elimination of one or more of the conditions may result in the extension of a substantial risk of forfeiture, the recognition of which would be subject to the rules discussed in section III.E of this preamble.

To be treated as an involuntary severance from employment, a severance from employment for good reason must result from unilateral action taken by the eligible employer resulting in a material adverse change to the working relationship (such as a material reduction in the employee's duties, working conditions, or pay). Other factors that may be taken into account in determining whether a termination for good reason effectively constitutes an involuntary severance from employment include the following:

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[7] See section 457(e)(11)(B) for special rules relating to length of service award plans.

- Whether the payments upon severance from employment for good reason are in the same amount and paid at the same time as payments conditioned upon an employer-initiated severance from employment without cause; and
- whether the employee is required to give notice to the employer of the material adverse change in conditions and provide the employer with an opportunity to remedy the adverse change.

The proposed regulations also provide a safe harbor under which a plan providing for the payment of amounts upon a voluntary severance from employment under certain conditions, that are specified in writing by the time the legally binding right to the payment arises, will be treated as providing for a payment upon a severance from employment for good reason.

c. Window Programs

The proposed regulations provide that the involuntary severance from employment requirement does not apply to window programs. The proposed regulations define the term window program to mean a program established by an employer to provide separation pay in connection with an impending severance from employment. To be a window program, the program must be offered for a limited period of time (typically no longer than 12 months), and the eligible employer must make the program available to employees who have a severance from employment during that period or who have a severance from employment during that period under specified circumstances. A program is not offered for a limited period of time (and, therefore, is not a window program) if there is a pattern of repeatedly providing similar programs. Whether the recurrence of programs constitutes a pattern of repeatedly providing similar programs is based on all of the relevant facts and circumstances, including whether the benefits are on account of a specific reduction in workforce (or other operational conditions), whether there is a relationship between the separation pay and an event or condition, and whether the event or condition is temporary and discrete or is a permanent aspect of the employer's operations.

d. Voluntary Early Retirement Incentive Plans

The proposed regulations also provide that the involuntary severance from employment requirement does not apply to an applicable voluntary early retirement incentive plan described in section 457(e)(11)(D)(ii). That section describes an applicable voluntary early retirement incentive plan as a bona fide severance pay plan for purposes of section 457 with respect to payments or supplements that are made as an early retirement benefit, a retirement-type subsidy, or an early retirement benefit that is greater than a normal retirement benefit, as described in section 411(a)(9), and that are paid in coordination with a defined benefit pension plan that is qualified under section 401(a) and maintained by an eligible employer that is a governmental entity or a tax-exempt education association as described in section 457(e)(11)(D)(ii)(II). Section 457(e)(11)(D) provides that these payments or supplements are treated as provided under a bona fide severance pay plan only to the extent that they otherwise could have been provided under the defined benefit plan with which the applicable voluntary early retirement incentive plan is coordinated (determined as if the rules in section 411 applied to the defined benefit plan).

e. Transitional Relief in Announcement 2000–1

Announcement 2000–1 provides transitional guidance on certain broad-based nonelective plans of State or local governments that were in existence before December 22, 1999, and were treated as bona fide severance pay plans for years before 1999. Under the announcement, an eligible employer that is a governmental entity is not required to report, including on Form W-2, "Wage and Tax Statement," or Form 1099–R "Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.," amounts payable under plans that meet certain requirements until the amounts are actually or constructively received. The rules described in these proposed regulations regarding bona fide severance pay plans, as modified when these proposed regulations are finalized and become applicable, will supersede the transitional guidance in Announcement 2000–1. See section V.B of this preamble for special applicability dates for governmental plans.

C. Bona Fide Death Benefit Plan

The proposed regulations provide that a bona fide death benefit plan, which is treated as not providing for the deferral of compensation pursuant to section 457(e)(11)(A)(i), is a plan providing for death benefits as defined in § 31.3121(v)(2)–1(b)(4)(iv)(C) (relating to the application of the Federal Insurance Contributions Act to nonqualified deferred compensation). The proposed regulations further provide that benefits under a bona fide death benefit plan may be provided through insurance and that any lifetime benefits payable under the plan that may be includible in gross income will not be treated as including the value of any term life insurance coverage provided under the plan.

D. Bona Fide Disability Pay Plan

The proposed regulations provide that a bona fide disability pay plan, which is treated as not providing for the deferral of compensation pursuant to section 457(e)(11)(A)(i), is a plan that pays benefits only in the event of a participant's disability. For this purpose, the value of any taxable disability insurance coverage under the plan that is included in gross income is disregarded. These proposed regulations provide that a participant is disabled for this purpose if the participant meets any of the following three conditions:

- The participant is unable to engage in substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than 12 months;
- the participant is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than 12 months, receiving income replacement benefits for a continuous period of not less than three months under an accident or health plan covering employees of the eligible employer; or
- the participant is determined to be totally disabled by the Social Security Administration or the Railroad Retirement Board.

E. Bona Fide Sick Leave and Vacation Leave Plans

1. General Requirements

Under the proposed regulations, whether a sick or vacation leave plan is a bona fide sick or vacation leave plan, and therefore treated as not providing for the deferral of compensation under section 457(e)(11)(A)(i), is determined based on the facts and circumstances. A sick or vacation leave plan is generally treated as bona fide, and not as a plan providing for the deferral of compensation, if the facts and circumstances demonstrate that the primary purpose of the plan is to provide employees with paid time off from work because of sickness, vacation, or other personal reasons. Factors used in determining whether a plan is a bona fide sick or vacation leave plan include the following:

- Whether the amount of leave provided could reasonably be expected to be used by the employee in the normal course (and before the cessation of services);
- limits, if any, on the ability to exchange unused accumulated leave for cash or other benefits and any applicable accrual restrictions (for example, where permissible under applicable law, the use of forfeiture provisions often referred to as use-or-lose rules);
- the amount and frequency of any in-service distributions of cash or other benefits offered in exchange for accumulated and unused leave;
- whether the payment of unused sick or vacation leave is made promptly upon severance from employment (or, instead, is paid over a period of time after severance from employment); and
- whether the sick leave, vacation leave, or combined sick and vacation leave offered under the plan is broadly applicable or is available only to certain employees.

2. Delegation of Authority to Commissioner

The Treasury Department and the IRS recognize that eligible employers sponsor a wide variety of sick and vacation leave plans and that additional rules on more specific arrangements or features of these plans may be beneficial. Accordingly, the proposed regulations provide that the Commissioner may issue additional rules regarding bona fide sick or vacation leave plans in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin, as the Commissioner determines to be necessary or appropriate.

F. Constructive Receipt

Bona fide sick or vacation leave plans (and certain other plans) are treated as not providing for the deferral of compensation for purposes of section 457, and the general federal tax principles for determining the timing and amount of income inclusion, including the constructive receipt rules of section 451, apply to these plans. See §§ 1.451–1 and 1.451–2 for rules regarding constructive receipt of income.

IV. Ineligible Plans Under Section 457(f)

A. Tax Treatment of Amounts Deferred Under Section 457(f)

Consistent with section 457(f)(1)(A), the proposed regulations provide that if a plan of an eligible employer provides for a deferral of compensation for the benefit of a participant or beneficiary and the plan is not an eligible plan (an ineligible plan), the compensation deferred under the plan is includible in the gross income of the participant or beneficiary under section 457(f)(1)(A) on the date (referred to in this preamble and the proposed regulations as the applicable date) that is the later of the date the participant or beneficiary obtains a legally binding right to the compensation or, if the compensation is subject to a substantial risk of forfeiture at that time, the date the substantial risk of forfeiture lapses. Generally, the amount of the compensation deferred under the plan that is includible in gross income on the applicable date is the present value, as of that date, of the amount of compensation deferred. For this purpose, the amount of compensation deferred under a plan as of an applicable date includes any earnings as of that date on amounts deferred under the plan.

Consistent with section 457(f)(1)(B), the proposed regulations provide that any earnings credited thereafter on compensation that was included in gross income under section 457(f)(1)(A) are includible in the gross income of a participant or beneficiary when paid or made available to the participant or beneficiary and are taxable under section 72. For purposes of section 72, the participant (or beneficiary) is treated as having an investment in the contract equal to the amount actually included in gross income on the applicable date.

Consistent with section 457(f)(2), the proposed regulations provide that section 457(f)(1) does not apply to a qualified plan described in section 401(a), an annuity plan or contract described in section 403, the portion of a plan that consists of a trust to which section 402(b) applies, a qualified governmental excess benefit arrangement described in section 415(m), the portion of a plan that consists of a transfer of property to which section 83 applies, or the portion of an applicable employment retention plan described in section 457(f)(4) with respect to any participant.

B. Calculation of the Present Value of Compensation Deferred Under an Ineligible Plan

1. Overview

The proposed regulations provide general rules for determining the present value of compensation deferred under an ineligible plan. The proposed regulations also include specific rules for determining the present value of compensation deferred under ineligible plans that are account balance plans. The rules for determining present value in the proposed regulations are similar to the rules for determining present value in the proposed section 409A regulations.[8]

The Treasury Department and the IRS expect that these regulations will be finalized after the proposed section 409A regulations are finalized and that these proposed regulations, when finalized, will adopt many provisions of § 1.409A–4 for ease of administration. Accordingly, these proposed regulations include cross references to certain provisions of § 1.409A–4 as currently proposed, including rules for determining present value under certain specific types of plans, such as reimbursement and in-kind benefit arrangements[9] and split-dollar life insurance arrangements,[10] and rules regarding the treatment of payment restrictions and alternative times and forms of a future payment. The Treasury Department and the IRS request comments on whether it is appropriate to provide any additional exceptions from the application of the rules currently described in the proposed section 409A regulations to amounts includible in income under section 457(f), to account for the different manners in which the two provisions apply to an amount deferred.

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[8] One difference between these proposed regulations and the proposed section 409A regulations is that income inclusion under section 457(f) and § 1.457–12(a)(2), and the present value calculation under these proposed regulations, is determined as of the applicable date, whereas income inclusion under section 409A, and the present value calculation under the proposed § 1.409A–4, is determined as of the end of the service provider's taxable year.

[9] A reimbursement or in-kind benefit arrangement is an arrangement in which benefits for a participant are provided under a nonqualified deferred compensation arrangement described in § 1.409A–1(c)(2)(i)(E).

[10] A split-dollar insurance arrangement is an arrangement in which benefits for a participant are provided under a nonqualified deferred compensation plan described in § 1.409A–1(c)(2)(i)(F).

2. Present Value of Compensation Deferred Under an Account Balance Plan

The proposed regulations provide specific rules for calculating the present value of compensation deferred under an ineligible plan that is an account balance plan (as defined in § 31.3121(v)(2)–1(c)(1)(ii) and (iii)).[11] Provided that the account balance is determined using a predetermined actual investment or a reasonable rate of interest, the present value of an amount payable under an account balance plan as of an applicable date is generally the amount credited to the account, which includes both the principal and any earnings or losses through the applicable date. If the account balance is not determined using a predetermined actual investment or a reasonable rate of interest, the present value of compensation deferred under the plan as of an applicable date is equal to the amount credited to the participant's account as of that date, plus the present value of the excess (if any) of the earnings to be credited under the plan after the applicable date and through the projected payment date over the earnings that would be credited during that period using a reasonable rate of interest. If the present value of compensation deferred under the plan is not determined and is not taken into account by the taxpayer in this manner, the present value of the compensation deferred under the plan as of the applicable date will be treated as equal to the amount credited to the participant's account as of that date, plus the present value of the excess (if any) of the earnings to be credited under the plan through the projected payment date over the earnings that would be credited using the applicable Federal rate. The proposed regulations also provide that if the amount of earnings or losses credited under an account balance plan is based on the greater of the earnings on two or more investments or interest rates, then the amount included in income on the applicable date is the sum of the amount credited to the participant's account as of the applicable date and the present value (determined as described in section IV.B.3 of this preamble) of the right to future earnings.

3. Present Value of Compensation Deferred Under a Plan That Is Not an Account Balance Plan

a. Reasonable Actuarial Assumptions

The proposed regulations also set forth rules for calculating the present value of compensation deferred under an ineligible plan that is not an account balance plan. Under the proposed regulations, the present value of an amount deferred under such a plan as of an applicable date is the value, as of that date, of the right to receive payment of the compensation in the future, taking into account the time value of money and the probability that the payment will be made. Any actuarial assumptions used to calculate the present value of the compensation deferred must be reasonable as of the applicable date, determined based on all of the relevant facts and circumstances. For this purpose, taking into account the probability that a participant might die before receiving certain benefits is a reasonable actuarial assumption only if the plan provides that the benefits will be forfeited upon death. Discounts based on the probability that payments will not be made due to the unfunded status of the plan, the risk that the eligible employer or another party may be unwilling or unable to pay, the possibility of future plan amendments or changes in law, and other similar contingencies are not permitted for purposes of determining present value under the proposed regulations.

b. Treatment of Severance From Employment

If the present value of an amount depends on the time when a severance from employment occurs and the severance from employment has not occurred by the applicable date, then, for purposes of determining the present value of the amount, the severance from employment generally may be treated as occurring on any date on or before the fifth anniversary of the applicable date, unless, as of the applicable date, it would be unreasonable to use such an assumption. For example, if the applicable date occurs in 2017 and the employer knows on the applicable date that the severance from employment will occur in 2018, it would be unreasonable to use a date after the expected severance from employment date to determine the present value of the compensation.

c. Treatment of Payments Based on Formula Amounts

Some ineligible plans may provide that all or part of the amount payable under the plan is determined by reference to one or more factors that are indeterminable on the applicable date. For example, an amount payable may be dependent on a participant's final average compensation and total years of service. These proposed regulations refer to such an amount as a formula amount. The proposed regulations provide that the determination of the present value of a formula amount under an ineligible plan must be based on reasonable, good faith assumptions with respect to any contingencies as to the amount of the payment, with the assumptions based on all the facts and circumstances existing on the applicable date. The proposed regulations also provide that, if only a portion of the compensation deferred under the plan consists of a formula amount, the amount payable with respect to that portion is determined under the rules applicable to formula amounts, and the remaining balance is determined under the rules applicable to amounts that are not formula amounts.

d. Unreasonable Actuarial Assumptions

If the Commissioner determines that the actuarial assumptions used by an employer in determining present value are not reasonable, the proposed regulations provide that the Commissioner will determine the present value of the compensation deferred using actuarial assumptions and methods that the Commissioner determines to be reasonable based on all of the facts and circumstances.

4. Loss Deduction Rules

The proposed regulations contain rules similar to the loss deduction rules in the proposed section 409A regulations. Under the rules in these proposed regulations, if a participant includes an amount of deferred compensation in income under section 457(f)(1)(A), but the compensation that is subsequently paid or made available is less than the amount included in income because the participant has forfeited or lost some or all of the compensation due to death or some other reason (for example, due to investment performance), the participant is entitled to a deduction for the taxable year in which any remaining right to the amount is permanently forfeited under the plan's terms or otherwise permanently lost. The deduction allowed for the taxable year in which the permanent forfeiture or loss occurs is equal to the amount previously included in income under section 457(f)(1)(A), less the total amount of compensation that is actually paid or made available under the plan that constitutes a return of investment in the contract. In the case of an employee, the available deduction generally would be treated as a miscellaneous itemized deduction, subject to the deduction limitations applicable to such expenses under sections 67 and 68.[12]

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[11] The rules in these regulations, however, do not apply with respect to Federal Insurance Contributions Act and Federal Unemployment Tax Act taxation liability under sections 3121(v)(2) and 3306(r)(2), respectively, and the regulations thereunder.

5. Examples Illustrating the Present Value Rules

The proposed regulations include several examples illustrating the application of the present value rules to the more common types of plans providing for the deferral of compensation under section 457(f). The regulations do not illustrate the application of these valuation rules to plans that are more unusual for employees of governmental and tax-exempt entities, such as compensatory options to acquire stock or other property. The amount includible in income on the applicable date under these less common types of plans would be determined under the general rules for plans that are not account balance plans.

C. Definition of Deferral of Compensation

1. In General

The proposed regulations define the term deferral of compensation for purposes of determining whether section 457(f) applies to an arrangement because it provides for a deferral of compensation. In general, a plan provides for a deferral of compensation if a participant has a legally binding right during a taxable year to compensation that, pursuant to the terms of the plan, is or may be payable in a later taxable year. However, the proposed regulations generally provide that a participant does not have a legally binding right to compensation to the extent that it may be unilaterally reduced or eliminated by the employer after the services creating the right have been performed.

Whether a plan provides for a deferral of compensation is generally based on the terms of the plan and the relevant facts and circumstances at the time that the participant obtains a legally binding right to the compensation, or, if later, when a plan is amended to convert a right that does not provide for a deferral of compensation into a right that does provide for a deferral of compensation. For example, if a plan providing retiree health care does not initially provide for a deferral of compensation but is later amended to provide the ability to receive future cash payments instead of health benefits, it may become a plan that provides for the deferral of compensation at the time of the amendment.

Under the proposed regulations, an amount of compensation deferred under a plan that provides for the deferral of compensation does not cease to be an amount subject to section 457(f) by reason of any change to the plan that would recharacterize the right to the amount as a right that does not provide for the deferral of compensation. In addition, any change under the plan that results in an exchange of an amount deferred under the plan for some other right or benefit that would otherwise be excluded from the participants' gross income does not affect the characterization of the plan as one that provides for a deferral of compensation. Thus, for example, if a plan that provides for a deferral of compensation is amended to provide health benefits instead of cash, it will retain its character as a plan that provides for a deferral of compensation.

2. Short-Term Deferrals

The proposed regulations provide that a deferral of compensation does not occur with respect to any amount that would be a short-term deferral under § 1.409A–1(b)(4), substituting the definition of a substantial risk of forfeiture provided under these proposed regulations for the definition under § 1.409A–1(d). Accordingly, a deferral of compensation does not occur with respect to any payment that is not a deferred payment, provided that the participant actually or constructively receives the payment on or before the last day of the applicable 2½ month period. For this purpose, the applicable 2½ month period is the period ending on the later of the 15th day of the third month following the end of the first calendar year in which the right to the payment is no longer subject to a substantial risk of forfeiture or the 15th day of the third month following the end of the eligible employer's first taxable year in which the right to the payment is no longer subject to a substantial risk of forfeiture.

Because there is considerable overlap between the definition of substantial risk of forfeiture for purposes of section 457(f) and the definition of substantial risk of forfeiture for purposes of section 409A, in many cases amounts that, under this rule, are not deferred compensation subject to section 457(f) are also not deferred compensation subject to section 409A. For example, if an arrangement provides for the payment of a bonus on or before March 15 of the year following the calendar year in which the right to the bonus is no longer subject to a substantial risk of forfeiture (within the meaning of both these proposed regulations and § 1.409A–1(d)) and the bonus is paid on or before that March 15, the arrangement would not be a plan providing for a deferral of compensation to which section 457(f) (or section 409A) applies. For circumstances in which a payment under a plan made after that March 15 may still qualify as a short-term deferral for purposes of sections 409A and 457(f) (due to incorporation of the section 409A regulatory provisions into these proposed regulations under section 457(f)), see § 1.409A–1(b)(4)(ii).

3. Recurring Part-Year Compensation

After issuance of the final section 409A regulations, commenters expressed concerns about the application of section 409A to situations involving certain recurring part-year compensation. For this purpose, recurring part-year compensation is compensation paid for services rendered in a position that the employer and employee reasonably anticipate will continue under similar terms and conditions in subsequent years, and under which the employee will be required to provide services during successive service periods each of which comprises less than 12 months (for example, a teacher providing services during a school year comprised of 10 consecutive months) and each of which begins in one taxable year of the employee and ends in the next taxable year. In general, commenters asserted that section 409A should not apply to situations involving recurring part-year compensation because the amount being deferred from one taxable year to the next taxable year is typically small and because most taxpayers view that type of arrangement as a method of managing cash flow, rather than a tax-deferral opportunity.

In response to these comments, Notice 2008–62 provided that an arrangement under which an employee or independent contractor receives recurring part-year compensation does not provide for the deferral of compensation for purposes of section 409A or for purposes of section 457(f) if (i) the arrangement does not defer payment of any of the recurring part-year compensation beyond the last day of the 13th month following the beginning of the service period, and (ii) the arrangement does not defer from one taxable year to the next taxable year the payment of more than the applicable dollar amount under section 402(g)(1)(B) ($18,000 for 2016).

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[12] Section 1341 would not be applicable to this type of loss because inclusion of an amount in income as a result of section 457(f) would not constitute receipt of an amount to which it appeared that the taxpayer had an unrestricted right in the taxable year of inclusion.

Some commenters, however, subsequently expressed concerns that Notice 2008–62 does not adequately address some teaching positions, such as those of college and university faculty members. They asserted that, depending on several variables (such as the month in which the service period begins), the dollar limitation in the notice could result in adverse tax consequences to teachers with academic year compensation as low as $80,000. Commenters further observed that some of these arrangements are nonelective and, therefore, some employees cannot opt out of a recurring part-year compensation arrangement. Some commenters also contended that the rules set forth in the notice were difficult to apply.

To simplify the rule set forth in Notice 2008–62, and recognizing that educational employers frequently structure their pay plans to include recurring part-year compensation and that the main purpose of this design is to achieve an even cash flow for employees who do not work for a portion of the year, these proposed regulations modify the recurring part-year compensation rule for purposes of section 457(f). The proposed regulations provide that a plan or arrangement under which an employee receives recurring part-year compensation that is earned over a period of service does not provide for the deferral of compensation if the plan or arrangement does not defer payment of any of the recurring part-year compensation to a date beyond the last day of the 13th month following the first day of the service period for which the recurring part-year compensation is paid, and the amount of the recurring part-year compensation (not merely the amount deferred) does not exceed the annual compensation limit under section 401(a)(17) ($265,000 for 2016) for the calendar year in which the service period commences. A conforming change is included in proposed regulations under section 409A that are also published in the Proposed Rules section of this issue of the **Federal Register**.

D. Interaction of Section 457 With Section 409A

The proposed regulations also address the interaction of the rules under section 457(f) and section 409A. Section 409A(c) provides that nothing in section 409A is to be construed to prevent the inclusion of amounts in gross income under any other provision of chapter 1 of subtitle A of the Code (Normal taxes and surtaxes) or any other rule of law earlier than the time provided in section 409A. In addition, it provides that any amount included in gross income under section 409A is not required to be included in gross income under any other provision of chapter 1 of subtitle A or any other rule of law later than the time provided in section 409A. The proposed regulations provide that the rules under section 457(f) apply to plans separately and in addition to the requirements under section 409A.[13] Thus, a deferred compensation plan of an eligible employer that is subject to section 457(f) may also be a nonqualified deferred compensation plan that is subject to section 409A. Section 1.457–12(d)(5)(iii) of the proposed regulations provides an example of the interaction of sections 409A and 457(f), and it is intended that this example will also be included in § 1.409A–4 when those currently proposed regulations are finalized.

E. Rules Relating to Substantial Risk of Forfeiture

The proposed regulations provide rules regarding the conditions that constitute a substantial risk of forfeiture for purposes of section 457(f). As discussed in section IV.A of this preamble, an amount to which an employee has a legally binding right under an ineligible plan is generally includible in gross income on the later of the date the employee obtains the legally binding right to the compensation or, if the compensation is subject to a substantial risk of forfeiture, the date the substantial risk of forfeiture lapses. The proposed regulations provide that an amount is generally subject to a substantial risk of forfeiture for this purpose only if entitlement to that amount is conditioned on the future performance of substantial services, or upon the occurrence of a condition that is related to a purpose of the compensation if the possibility of forfeiture is substantial. A special rule applies to determine whether initial deferrals of current compensation may be treated as subject to a substantial risk of forfeiture and whether a substantial risk of forfeiture can be extended. For this purpose, current compensation refers to compensation that is payable on a current basis such as salary, commissions, and certain bonuses, and does not include compensation that is deferred compensation.

Whether an amount is conditioned on the future performance of substantial services is based on all of the relevant facts and circumstances, such as whether the hours required to be performed during the relevant period are substantial in relation to the amount of compensation. A condition is related to a purpose of the compensation only if the condition relates to the employee's performance of services for the employer or to the employer's tax exempt or governmental activities, as applicable, or organizational goals. A substantial risk of forfeiture exists based on a condition related to the purpose of the compensation only if the likelihood that the forfeiture event will occur is substantial. Also, an amount is not subject to a substantial risk of forfeiture if the facts and circumstances indicate that the forfeiture condition is unlikely to be enforced. Factors considered for purposes of determining the likelihood that the forfeiture will be enforced include, but are not limited to, the past practices of the employer, the level of control or influence of the employee with respect to the organization and the individual(s) who would be responsible for enforcing the forfeiture, and the enforceability of the provisions under applicable law.

Under these proposed regulations, if a plan provides that entitlement to an amount is conditioned on an involuntary severance from employment without cause, the right is subject to a substantial risk of forfeiture if the possibility of forfeiture is substantial. For this purpose, a voluntary severance from employment that would be treated as an involuntary severance from employment under a bona fide severance pay plan for purposes of section 457(e)(11)(A)(i) (that is, a severance from employment for good reason) is also treated as an involuntary severance from employment without cause. See section III.B.2 of this preamble for a discussion of circumstances under which a severance from employment for good reason may be treated as an involuntary severance from employment for purposes of section 457(e)(11)(A)(i).

The proposed regulations provide that compensation is not considered to be subject to a substantial risk of forfeiture merely because it would be forfeited if the employee accepts a position with a competing employer unless certain conditions are satisfied. First, the right to the compensation must be expressly conditioned on the employee refraining from the performance of future services pursuant to a written agreement that is enforceable under applicable law. Second, the employer must consistently make reasonable efforts to verify compliance with all of the noncompetition agreements to which it is a party (including the noncompetition agreement at issue). Third, at the time the noncompetition agreement becomes binding, the facts and circumstances must show that the employer has a substantial and bona fide interest in preventing the employee from performing the prohibited services and that the employee has a bona fide interest in engaging, and an ability to engage, in the prohibited services. The proposed regulations identify several factors that are relevant for this purpose.

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[13] See also § 1.409A–1(a)(4).

Additional conditions apply with respect to the ability to treat initial deferrals of current compensation as being subject to a substantial risk of forfeiture. Similarly, an attempt to extend the period covered by a risk of forfeiture, often referred to as a rolling risk of forfeiture, is generally disregarded under the proposed regulations unless certain conditions are met.

Specifically, the proposed regulations permit initial deferrals of current compensation to be subject to a substantial risk of forfeiture and also allow an existing risk of forfeiture to be extended only if all of the following requirements are met. First, the present value of the amount to be paid upon the lapse of the substantial risk of forfeiture (as extended, if applicable) must be materially greater than the amount the employee otherwise would be paid in the absence of the substantial risk of forfeiture (or absence of the extension). The proposed regulations provide that an amount is materially greater for this purpose only if the present value of the amount to be paid upon the lapse of the substantial risk of forfeiture, measured as of the date the amount would have otherwise been paid (or in the case of an extension of the risk of forfeiture, the date that the substantial risk of forfeiture would have lapsed without regard to the extension), is more than 125 percent of the amount the participant otherwise would have received on that date in the absence of the new or extended substantial risk of forfeiture. (No implication is intended that this standard would also apply for purposes of § 1.409A–1(d)(1).)

Second, the initial or extended substantial risk of forfeiture must be based upon the future performance of substantial services or adherence to an agreement not to compete. It may not be based solely on the occurrence of a condition related to the purpose of the transfer (for example, a performance goal for the organization), though that type of condition may be combined with a sufficient service condition.

Third, the period for which substantial future services must be performed may not be less than two years (absent an intervening event such as death, disability, or involuntary severance from employment).

Fourth, the agreement subjecting the amount to a substantial risk of forfeiture must be made in writing before the beginning of the calendar year in which any services giving rise to the compensation are performed in the case of initial deferrals of current compensation or at least 90 days before the date on which an existing substantial risk of forfeiture would have lapsed in the absence of an extension. Special rules apply to new employees. The proposed regulations do not extend these special rules for new employees to employees who are newly eligible to participate in a plan. The Treasury Department and the IRS request comments on whether special provisions for newly eligible employees are needed in the context of arrangements subject to section 457(f), and if so whether the rules under §§ 1.409A–1(c)(2) and 1.409A–2(a)(7) would be a useful basis for similar rules under section 457(f) and how an aggregated single plan (versus multiple plans) should be defined for this purpose to ensure that the rules are not subject to manipulation.

V. Proposed Applicability Dates

A. General Applicability Date

Generally, these regulations are proposed to apply to compensation deferred under a plan for calendar years beginning after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, including deferred amounts to which the legally binding right arose during prior calendar years that were not previously included in income during one or more prior calendar years. No implication is intended regarding application of the law before these proposed regulations become applicable. Taxpayers may rely on these proposed regulations until the applicability date.

B. Special Applicability Dates

These regulations are proposed to include three special applicability dates for specific provisions. First, in the case of a plan that is maintained pursuant to one or more collective bargaining agreements that have been ratified and are in effect on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, these regulations would not apply to compensation deferred under the plan before the earlier of (1) the date on which the last of the collective bargaining agreements terminates (determined without regard to any extension thereof after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, or (2) the date that is three years after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Second, for all plans, with respect to the rules regarding recurring part-year compensation for periods before the applicability date of these regulations, taxpayers may rely on either the rules set forth in these proposed regulations or the rules set forth in Notice 2008–62.

Third, to the extent that legislation is required to amend a governmental plan, the proposed regulations would apply only to compensation deferred under the plan in calendar years beginning on or after the close of the second regular legislative session of the legislative body with the authority to amend the plan that begins after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules, including whether special transition rules are needed for plans established before the proposed applicability dates of these regulations (including sick and vacation leave or severance pay plans that may be treated as providing deferred compensation subject to section 457, but that, under the proposed regulations, may be treated as providing deferred compensation subject to section 457(f), whether additional exceptions are appropriate to the general application of the rules currently described in the proposed section 409A regulations to determine the amounts includible in income under section 457(f), and whether special provisions for newly eligible employees are needed in the context of arrangements subject to section 457(f) (and if so whether the rules under §§ 1.409A–1(c)(2) and 1.409A–2(a)(7) would be a useful basis for similar rules under section 457(f)). All comments submitted by the public will be available at *www.regulations.gov* or upon request.

A public hearing has been scheduled for October 18, 2016, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by September 20, 2016 and an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by September 20, 2016. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Statement of Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS Web site at *http://www.irs.gov* or contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Drafting Information

The principal author of the proposed regulations is Keith R. Kost, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.457–1 is revised to read as follows:

§ 1.457–1 General overview of section 457.

Section 457 provides rules for nonqualified deferred compensation plans established by eligible employers as defined under § 1.457–2(d). Eligible employers may establish either deferred compensation plans that are eligible plans that meet the requirements of section 457(b) and §§ 1.457–3 through 1.457–10, or deferred compensation plans that do not meet the requirements of section 457(b) and §§ 1.457–3 through 1.457–10 (and therefore are ineligible plans which are generally subject to federal income tax treatment under section 457(f) and § 1.457–12(a)). Plans described in § 1.457–11 are not subject to section 457 or are treated as not providing for a deferral of compensation for purposes of section 457 (and, accordingly, the rules under §§ 1.457–3 through 1.457–10 and § 1.457–12(a) do not apply to these plans).

■ **Par. 3.** Section 1.457–2 is amended by:

■ 1. Revising the introductory text.

■ 2. Revising the second sentence of paragraph (f).

■ 3. Revising the last sentence of paragraph (i).

■ 4. Revising paragraph (k).

The revisions read as follows:

§ 1.457–2 Definitions.

This section sets forth the definitions that are used under §§ 1.457–1 through 1.457–12.

* * * * *

(f) * * * An eligible governmental plan is an eligible plan that is established and maintained by a State as defined in paragraph (l) of this section and that meets the requirements of section 401(a)(37). * * *

* * * * *

(i) * * * Solely for purposes of section 457 and §§ 1.457–2 through 1.457–12, the term *nonelective employer contribution* includes employer contributions that would be described in section 401(m) if they were contributions to a qualified plan.

* * * * *

(k) *Plan. Plan* includes any agreement, method, program, or other arrangement (including an individual employment agreement) under which the payment of compensation for services rendered to an eligible employer is deferred (whether by salary reduction, nonelective employer contribution, or otherwise). However, the plans described in § 1.457–11 are either not subject to section 457 or are treated as not providing for a deferral of compensation for purposes of section 457, even if the payment of compensation is deferred under the plan.

* * * * *

■ **Par. 4.** Section 1.457–4 is amended by:

■ 1. Revising paragraphs (a), (b), and the last sentence of (e)(1).

■ 2. Removing the language "§ 1.457–11" wherever it appears in paragraphs (e)(1), (e)(2), (e)(3), and (e)(5) *Example 1* and adding the language "§ 1.457–12" in its place.

The revisions read as follows:

§ 1.457–4 Annual deferrals, deferral limitations, and deferral agreements under eligible plans.

(a) *Taxation of annual deferrals.* With the exception of designated Roth contributions (which are not excludable from gross income), annual deferrals that satisfy the requirements of paragraphs (b) and (c) of this section are excluded from the gross income of a participant in the year deferred or contributed and are not includible in gross income until paid to the participant in the case of an eligible governmental plan, or until paid or otherwise made available to the participant in the case of an eligible plan of a tax-exempt entity. See § 1.457–7.

(b) *Agreement for deferral*—(1) *In general.* To be an eligible plan, the plan must provide that compensation for any calendar month may be deferred by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation to be deferred under the agreement would otherwise be paid or made available, and any modification or revocation of such an agreement may not become effective before the first day of the month following the month in which the modification or revocation occurs. However, a new employee may defer compensation in the first calendar month of employment if an agreement providing for the deferral is entered into on or before the first day the participant performs services for the eligible employer. An eligible plan may provide that if a participant enters into an agreement providing for deferral by salary reduction under the plan, the agreement will remain in effect until the participant revokes or alters the terms of the agreement. Nonelective employer contributions to an eligible plan are not subject to the timing rules for salary reduction agreements described in this paragraph (b)(1).

(2) *Designated Roth contributions in plans maintained by eligible governmental employers*—(i) *Elections.* An election by a participant to make a designated Roth contribution (as defined in section 402A(c)(1)) to an eligible governmental plan in lieu of all or a portion of the amount that the participant could elect to contribute to the plan on a pre-tax basis must be irrevocably designated as an elective deferral that is not excludable from gross income in accordance with the timing rules under paragraph (b)(1) of this section. Designated Roth contributions are treated the same as pre-tax contributions for purposes of §§ 1.457–1 through 1.457–10, except as otherwise specifically provided in those sections.

(ii) *Separate accounting.* Contributions and withdrawals of a participant's designated Roth contributions must be credited and debited to a designated Roth account maintained for the participant, and the plan must maintain a record of the participant's investment in the contract (that is, designated Roth contributions that have not been distributed) with respect to the participant's designated Roth account. In addition, gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to the designated Roth account and other accounts under the plan. However, forfeitures may not be allocated to the designated Roth account, and no contributions other than designated Roth contributions and rollover contributions described in section 402A(c)(3)(B) may be allocated to such account. The separate accounting requirement described in this paragraph applies to a plan at the time a designated Roth contribution is contributed to the plan and continues to apply until all designated Roth contributions (and the earnings attributable thereto) are distributed from the plan. See A–13 of § 1.402A–1 for additional requirements for separate accounting.

* * * * *

(e) * * *

(1) * * * Thus, an excess deferral is includible in gross income when deferred or, if later, when the excess deferral first ceases to be subject to a substantial risk of forfeiture, under the rules described in § 1.457–12(e).

* * * * *

■ **Par. 5.** Section 1.457–6 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

§ 1.457–6 Timing of distributions under eligible plans.

* * * * *

(b) * * *

(1) * * * An employee has a severance from employment with the eligible employer if the employee dies, retires, or otherwise has a severance from employment (including as described in section 414(u)(12)(B)) with the eligible employer.* * *

* * * * *

■ **Par. 6.** Section 1.457–7 is amended by revising the section heading and paragraph (b)(1), redesignating paragraph (b)(4) as (b)(5), and adding a new paragraph (b)(4) to read as follows:

§ 1.457–7 Taxation of distributions under eligible plans.

* * * * *

(b) * * *

(1) *Amounts included in gross income in year paid under an eligible governmental plan.* Except as provided in paragraphs (b)(2), (3), and (4) of this section (or in § 1.457–10(c) relating to payments to a spouse or former spouse pursuant to a qualified domestic relations order), amounts deferred under an eligible governmental plan are includible in the gross income of a participant or beneficiary for the taxable year in which paid to the participant or beneficiary under the plan. Distributions from designated Roth accounts are excludable from gross income to the extent provided in section 402A and §§ 1.402A–1 and 1.402A–2.

* * * * *

(4) *Certain amounts from an eligible governmental plan not in excess of the amount paid for qualified health insurance premiums.* Amounts paid to a participant who is an eligible retired public safety officer from an eligible governmental plan are excludible from gross income to the extent provided in section 402(l).

* * * * *

■ **Par. 7.** Section 1.457–9 is amended by revising the third sentence of paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 1.457–9 Effect on eligible plans when not administered in accordance with eligibility requirements.

(a) * * * If a plan ceases to be an eligible governmental plan, amounts subsequently deferred by participants are includible in gross income when deferred, or, if later, when the amounts deferred first cease to be subject to a substantial risk of forfeiture, under the rules described in § 1.457–12(e). * * *

(b) * * * See § 1.457–12 for rules regarding the treatment of an ineligible plan.

§ 1.457–10 [Amended]

■ **Par. 8.** Section 1.457–10 is amended by removing the language "§ 1.457–11" wherever it appears in paragraphs (a)(2)(i), (a)(3) *Example 2* (ii), (c)(2) *Example 1* (ii) and *Example 2* (ii) and adding the language "§ 1.457–12" in its place.

§§ 1.457–11 and 1.457–12 [Redesignated as §§ 1.457–12 and 1.457–13]

■ **Par. 9.** Redesignate §§ 1.457–11 and 1.457–12 as §§ 1.457–12 and 1.457–13, respectively.

■ **Par. 10.** Add a new § 1.457–11 to read as follows:

§ 1.457–11 Exclusions and exceptions for certain plans.

(a) *In general.* The plans described in paragraphs (b) and (c) of this section either are not subject to section 457 or are treated as not providing for a deferral of compensation for purposes of section 457, and, accordingly, the provisions of §§ 1.457–3 through 1.457–10 and 1.457–12(a) do not apply to these plans.

(b) *Plans not subject to section 457.* The following plans are not subject to section 457:

(1) Any plan satisfying the conditions in section 1107(c)(4) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2494) (TRA '86) (relating to certain plans for State judges);

(2) Any of the following plans (to which specific transitional statutory exclusions apply):

(i) A plan of a tax-exempt entity in existence prior to January 1, 1987, if the conditions of section 1107(c)(3)(B) of the TRA '86, as amended by section 1011(e)(6) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3342) (TAMRA), are satisfied (see § 1.457–2(b)(4) for a different rule that may apply to the annual deferrals permitted under this type of plan);

(ii) A collectively bargained nonelective deferred compensation plan in effect on December 31, 1987, if the conditions of section 6064(d)(2) of TAMRA are satisfied;

(iii) Amounts deferred under plans described in section 6064(d)(3) of TAMRA (relating to amounts deferred under certain nonelective deferred compensation plans in effect before 1989); and

(iv) Any plan satisfying the conditions in section 1107(c)(4) and (5) of TRA '86 (relating to certain plans for certain individuals with respect to which the IRS issued guidance before 1977); and

(3) Any plan described in section 457(e)(12) that provides only nonelective deferred compensation attributable to services not performed as an employee (for example, a plan providing nonelective deferred compensation attributable to services performed by independent contractors). For this purpose, deferred compensation is nonelective only if all individuals, other than those who have not satisfied any applicable initial service requirement, with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan.

(c) *Plans treated as not providing for a deferral of compensation.* The following plans are treated as not providing for a deferral of compensation for purposes of section 457, §§ 1.457–1 through 1.457–10, and § 1.457–12:

(1) A bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan, as described in section 457(e)(11)(A)(i) (see paragraph (d) of this section for the definition of a bona fide severance pay plan, paragraph (e) of this section for the definitions of a bona fide death benefit plan and a bona fide disability pay plan, and paragraph (f) of this section for the requirements for a bona fide sick or vacation leave plan); and

(2) A plan described in section 457(e)(11)(A)(ii) paying solely length of service awards that are based on service accrued after December 31,1996, to bona fide volunteers (and their beneficiaries) on account of qualified services performed by those volunteers.

(d) *Definition of bona fide severance pay plan*—(1) *In general.* A bona fide severance pay plan is an arrangement that meets the following requirements:

(i) Except as provided in paragraph (d)(3) of this section, benefits are payable only upon involuntary severance from employment, as defined in paragraph (d)(2) of this section (see § 1.457–6(b) for the meaning of severance from employment);

(ii) The amount payable does not exceed two times the participant's annualized compensation based upon the annual rate of pay for services provided to the eligible employer for the calendar year preceding the calendar year in which the participant has a severance from employment with the eligible employer (or the current calendar year if the participant had no compensation for services provided to the eligible employer in the preceding calendar year), adjusted for any increase during the year used to measure the rate of pay that was expected to continue indefinitely if the participant had not had a severance from employment; and

(iii) The entire severance benefit must be paid to the participant no later than the last day of the second calendar year following the calendar year in which the severance from employment occurs, pursuant to a requirement contained in a written plan document.

(2) *Involuntary severance from employment*—(i) *In general.* For purposes of paragraph (d)(1)(i) of this section, an *involuntary severance from employment* means a severance from employment due to the independent exercise of the eligible employer's unilateral authority to terminate the participant's services, other than due to the participant's implicit or explicit request, if the participant was willing and able to continue performing services. An involuntary severance from employment may include an eligible employer's failure to renew a contract at the time the contract expires, provided that the employee was willing and able to execute a new contract providing terms and conditions substantially similar to those in the expiring contract and to continue providing such services. The determination of whether a severance from employment is involuntary is based on all the facts and circumstances without regard to any characterization of the reason for the payment by the employer or participant.

(ii) *Severance from employment for good reason*—(A) *In general.* Notwithstanding paragraph (d)(2)(i) of this section, a participant's voluntary severance from employment will be treated as an involuntary severance from employment, for purposes of paragraph (d)(1)(i) of this section, if the severance occurs under certain bona fide conditions that are pre-specified in writing (referred to herein as a severance from employment for good reason), provided that the avoidance of the requirements of section 457 is not the primary purpose of the inclusion of the conditions or of the actions by the employer in connection with the satisfaction of the conditions, and a voluntary severance from employment under such conditions effectively constitutes an involuntary severance from employment. Notwithstanding the previous sentence, once the bona fide conditions have been established, the elimination of one or more of the conditions may result in the extension of a substantial risk of forfeiture, the recognition of which would be subject to the rules discussed in § 1.457–12(e)(2).

(B) *Material negative change required.* A severance from employment for good reason will be treated as an involuntary severance from employment only if the relevant facts and circumstances demonstrate that it was the result of unilateral employer action that caused a material negative change to the participant's relationship with the eligible employer. Some factors that may provide evidence of such a material negative change include a material reduction in the duties to be performed, a material negative change in the conditions under which the duties are to be performed, or a material reduction in the compensation to be received for performing such services. Other factors to be considered in determining whether a severance from employment due to good reason will be treated as an involuntary severance from employment include the extent to which the payments upon a severance from employment for good reason are in the same amount and made at the same time and in the same form as payments that would be made upon an actual involuntary severance from employment, and whether the employee is required to give the employer notice of the existence of the condition that would result in the treatment of a severance from employment as being for good reason and a reasonable opportunity to remedy the condition.

(C) *Safe harbor.* The requirements of paragraph (d)(2)(ii)(B) of this section are deemed to be satisfied if a severance from employment occurs under the conditions described in paragraph (d)(2)(ii)(C)(*1*) of this section, those conditions are specified in writing by the time the legally binding right to the payment arises, and the plan also satisfies the requirements in paragraphs (d)(2)(ii)(C)(*2*) and (*3*) of this section.

(*1*) The severance from employment occurs during a limited period of time not to exceed two years following the initial existence of one or more of the following conditions arising without the consent of the participant:

(*i*) A material diminution in the participant's base compensation;

(*ii*) A material diminution in the participant's authority, duties, or responsibilities;

(*iii*) A material diminution in the authority, duties, or responsibilities of the supervisor to whom the participant is required to report, including a requirement that a participant report to a corporate officer or employee instead of reporting directly to the board of directors (or similar governing body) of an organization;

(*iv*) A material diminution in the budget over which the participant retains authority;

(*v*) A material change in the geographic location at which the participant must perform services; or

(*vi*) Any other action or inaction that constitutes a material breach by the eligible employer of the agreement under which the participant provides services.

(*2*) The amount, time, and form of payment upon the severance from employment is substantially the same as the amount, time, and form of payment that would have been made upon an actual involuntary severance from employment, to the extent such right to payment exists.

(*3*) The participant is required to provide notice to the eligible employer of the existence of the applicable condition(s) described in paragraph (d)(2)(ii)(C)(*1*) of this section within a period not to exceed 90 days after the initial existence of the condition(s), upon the notice of which, the employer must be provided a period of at least 30 days during which it may remedy the condition(s) and not be required to pay the amount.

(3) *Window programs.* The requirement in paragraph (d)(1)(i) of this section that benefits be payable only upon involuntary severance from employment does not apply to a bona fide severance pay plan that provides benefits upon a severance from employment pursuant to a window program. For this purpose, a *window program* means a program established by an employer to provide separation pay in connection with an impending severance from employment, if the program is made available by the employer for a limited period of time (typically no longer than 12 months) to participants who have a severance from employment during that period or to participants who have a severance from employment during that period under specified circumstances. A program is not considered a window program for purposes of this paragraph if it is part of a pattern of multiple similar programs that, if offered as a single program, would not be a window program under this paragraph. Whether multiple programs constitute a pattern of similar programs is determined based on the relevant facts and circumstances. Although no one factor is determinative, relevant factors include whether the benefits are on account of a specific reduction in workforce (or some other entity-related operational condition), the degree to which the separation pay relates to an event or condition, and whether the event or condition is temporary or discrete or is a permanent aspect of the employer's practices.

(4) *Voluntary early retirement incentive plans*—(i) *In general.* Notwithstanding paragraph (d)(1) of this section, an applicable voluntary early retirement incentive plan (as defined in section 457(e)(11)(D)(ii)) is treated as a bona fide severance pay plan for purposes of this section with respect to payments or supplements made as an early retirement benefit, a retirement-type subsidy, or an early retirement benefit described in the last sentence of section 411(a)(9), if the payments or supplements are made in coordination with a defined benefit pension plan that is qualified under section 401(a) maintained by an eligible employer described in section 457(e)(1)(A) or by an education association described in section 457(e)(11)(D)(ii)(II). See section 1104(d)(4) of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), regarding the application of the Internal Revenue Code and certain other laws to any plan, arrangement, or conduct to which section 457(e)(11)(D) does not apply.

(ii) *Definitions.* The definitions in § 1.411(d)–3(g)(6)(i) and (iv) apply for purposes of determining whether payments or supplements are an early retirement benefit or a retirement-type subsidy, and the definition in § 1.411(a)–7(c)(4) applies for purposes of determining whether payments or supplements are an early retirement benefit described in the last sentence of section 411(a)(9).

(e) *Bona fide death benefit or disability pay plans*—(1) *Bona fide death benefit plan.* For purposes of section 457(e)(11)(A)(i) and this section, a *bona fide death benefit plan* is a plan providing death benefits as defined in § 31.3121(v)(2)–1(b)(4)(iv)(C) of this chapter, provided that, for purposes of this paragraph (e)(1), the death benefits may be provided through insurance and the lifetime benefits payable under the plan are not treated as including the value of any term life insurance coverage provided under the plan that is includible in gross income.

(2) *Bona fide disability pay plan.* For purposes of section 457(e)(11)(A)(i) and this section, a *bona fide disability pay plan* is a plan that pays benefits (whether or not insured) only in the event that a participant is disabled, provided that, for purposes of this paragraph (e)(2), the value of any disability insurance coverage provided under the plan that is included in gross income is disregarded. For this purpose, a participant is considered disabled only if the participant meets one of the following conditions:

(i) The participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than 12 months;

(ii) The participant is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the eligible employer; or

(iii) The participant is determined to be totally disabled by the Social Security Administration or Railroad Retirement Board.

(f) *Bona fide sick and vacation leave plans*—(1) *In general.* For purposes of section 457(e)(11)(A)(i) and this section, the determination of whether a sick or vacation leave plan is a bona fide sick or vacation leave plan is made based on the relevant facts and circumstances. In general, a plan is treated as a bona fide sick or vacation leave plan, and not an arrangement to defer compensation, if the facts and circumstances demonstrate that the primary purpose of the plan is to provide participants with paid time off from work because of sickness, vacation, or other personal reasons. Factors used in determining whether a plan is a bona fide sick or vacation leave plan include whether the amount of leave provided could reasonably be expected to be used in the normal course by an employee (before the employee ceases to provide services to the eligible employer) absent unusual circumstances, the ability to exchange unused accumulated leave for cash or other benefits (including nontaxable benefits and the use of leave to postpone the date of termination of employment), the applicable restraints (if any) on the ability to accumulate unused leave and carry it forward to subsequent years in circumstances in which the accumulated leave may be exchanged for cash or other benefits, the amount and frequency of any in-service distributions of cash or other benefits offered in exchange for accumulated and unused leave, whether any payment of unused leave is made promptly upon severance from employment (or instead is paid over a period after severance from employment), and whether the program (or a particular feature of the program) is available only to a limited number of employees.

(2) *Delegation of authority to Commissioner.* The Commissioner may provide additional rules regarding the requirements of a bona fide sick or vacation leave plan under section 457, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), as the Commissioner determines to be necessary or appropriate.

■ **Par. 11.** Newly-designated § 1.457–12 is revised to read as follows:

§ 1.457–12 Tax treatment of participants if plan is not an eligible plan.

(a) *Tax treatment of an ineligible plan under section 457(f)*—(1) *In general.* Pursuant to section 457(f)(1), if an eligible employer provides for a deferral of compensation under an ineligible plan, amounts will be included in income in accordance with paragraphs (a)(2) through (4) of this section, except as otherwise provided in this paragraph (a) or paragraph (b) of this section. See § 1.457–11 for plans that are not subject to section 457 or are not treated as providing for a deferral of compensation for purposes of section 457.

(2) *Income inclusion.* The present value of compensation deferred under an ineligible plan is includible in the gross income of a participant or beneficiary under section 457(f) on the applicable date. For this purpose, the applicable date is the later of the first date on which there is a legally binding right to the compensation or, if the compensation is subject to a substantial risk of forfeiture, the first date on which the substantial risk of forfeiture (within the meaning of section 457(f)(3)(B) and paragraph (e) of this section) lapses. Paragraph (c) of this section provides rules for determining the present value of the compensation deferred under the plan, including a requirement that the amount of compensation deferred under an ineligible plan as of an applicable date includes any earnings on the compensation as of that date.

(3) *Treatment of earnings after income inclusion.* Earnings credited on compensation deferred under an ineligible plan after the date on which the compensation is includible in gross income under section 457(f)(1) pursuant to paragraph (a)(2) of this section are includible in the gross income of a participant or beneficiary when paid or made available to the participant or beneficiary.

(4) *Income inclusion when compensation is paid or made available.* Amounts paid or made available to a participant or beneficiary under an ineligible plan are includible in the gross income of the participant or beneficiary under section 72, relating to annuities. For this purpose, an amount is paid or made available if there is actual or constructive receipt (within the meaning of § 1.451–2) of any taxable or nontaxable benefit, including a transfer of cash, a transfer of property includible in income under section 83, any other event that results in the inclusion in income under the economic benefit doctrine, a contribution to (or transfer or creation of a beneficial interest in) a trust described in section 402(b) at a time when contributions to the trust are includible in income under section 402(b), or inclusion of an amount in income under section 457A. An amount is also paid or made available for this purpose if there is a transfer, cancellation, or reduction of an amount of deferred compensation in exchange for benefits under a welfare benefit plan, a fringe benefit excludible under section 119 or section 132, or any other benefit that is excludible from gross income.

(5) *Investment in the contract.* For purposes of applying section 72 to amounts that are paid or made available as described in paragraph (a)(4) of this section, a participant is treated as having an investment in the contract to the extent that compensation has been included in gross income by the participant in accordance with paragraph (a)(2) of this section. An amount is treated as included in income for a taxable year only to the extent that the amount was properly includible in income and the participant actually included the amount in income (including on an original or amended federal income tax return or as a result of an IRS examination or a final decision of a court of competent jurisdiction).

(b) *Exceptions*—(1) *In general.* Section 457(f)(1) and paragraph (a) of this section do not apply to a plan or a portion of a plan described in this paragraph (b). The determination of whether a plan or a portion of a plan is described in this paragraph (b) is made as of the date on which the legally binding right to an amount arises. However, a plan or portion of a plan will cease to be a plan that is described in this paragraph (b) on the first date that it no longer meets the requirements described in this paragraph (b).

(2) *Certain retirement plans.* Annuity plans and contracts described in section 403 and plans described in section 401(a) are not subject to the provisions of section 457(f)(1) and paragraph (a) of this section.

(3) *Section 402(b) trusts*—(i) *Section 402(b).* The portion of a plan that consists of a trust to which section 402(b) applies is not subject to the provisions of section 457(f)(1) and paragraph (a) of this section.

(ii) *Example.* The provisions of this paragraph (b)(3) are illustrated in the following example:

Example. (i) *Facts.* On October 1, 2017, an eligible employer establishes an ineligible plan covering only one participant (a highly compensated employee under section 414(q)) under which the participant obtains an unconditional right to be paid $150,000 (plus interest at a specified reasonable rate) on October 1, 2021. As part of the plan, the employer simultaneously establishes a trust described in section 402(b) in the United States for the sole benefit of the participant. Under the terms of the plan and trust, the assets of the trust are also payable to the participant on October 1, 2021, and the amount that the employer is otherwise obligated to pay under the plan will be reduced (offset) by the amount paid to the participant from the trust. Section 402(b)(4) applies to the trust, and the trust has assets of $98,000 on October 1, 2017 and $100,000 on December 31, 2017.

(ii) *Conclusion.* Section 457(f) and this section apply only to the portion of the plan that is not funded through the section 402(b) trust. Thus, the participant has income under section 457(f) equal to the present value of the portion of the compensation deferred under the plan that is not funded through the section 402(b) trust on the date on which there is a legally binding right to the compensation (October 1, 2017). This present value is equal to $52,000 ($150,000—$98,000), which is included in the participant's gross income on October 1, 2017. The participant must also include $100,000 in gross income on December 31, 2017 pursuant to section 402(b)(4)(A).

(4) *Qualified governmental excess benefit arrangements under section 415(m).* A qualified governmental excess benefit arrangement described in section 415(m) is not subject to the provisions of section 457(f)(1) and paragraph (a) of this section.

(5) *Nonqualified annuities under section 403(c)*—(i) *Section 403(c) annuities.* The portion of a plan in which premiums are paid by an employer for an annuity contract to which section 403(c) applies is not subject to the provisions of section 457(f)(1) and paragraph (a) of this section.

(ii) *Examples.* The provisions of this paragraph (b)(5) are illustrated by the following examples:

Example 1. (i) *Facts.* A tax-exempt entity pays a premium for an annuity contract (described in section 403(c)) for the benefit of a participant. The annuity contract has a value of $135,000, and the participant is substantially vested (as defined in § 1.83–3(b)) at the time the premium is paid. The participant includes the full value ($135,000) in income under section 403(c) in the year the employer pays the premium.

(ii) *Conclusion.* Although the participant has a legally binding right to payments under the annuity contract that will be made in a subsequent taxable year, the participant's interest in the annuity contract is not subject to section 457(f)(1) and paragraph (a) of this section.

Example 2. (i) *Facts.* The facts are the same as in *Example 1 of this paragraph (b)(5),* except the participant's rights in the annuity contract are not substantially vested (as defined in § 1.83–3(b)) at the time the premium is paid and do not become substantially vested until a future taxable year. The participant does not include the full value of the contract in income under section 403(c) in the year the employer pays the premium.

(ii) *Conclusion.* Neither the payment of the premium nor the participant's interest in the annuity contract is subject to section 457(f)(1) or paragraph (a) of this section.

(6) *Transfer of property under section 83*—(i) *Section 83.* The portion of a plan that consists of a transfer of property to which section 83 applies is not subject to the provisions of section 457(f)(1) and paragraph (a) of this section. Specifically, section 457(f)(1) and paragraph (a) of this section do not apply if, on or before the first date on which compensation deferred under a plan is not subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B) and paragraph (e) of this section), the amount is paid through a transfer of property described in section 83. However, section 457(f)(1) and paragraph (a) of this section do apply if the first date on which compensation deferred under a plan is not subject to a substantial risk of forfeiture (as defined in section 457(f)(3)(B) and paragraph (e) of this section) precedes the date on which the amount is paid through a transfer of property described in section 83. If deferred compensation payable in property is includible in gross income under section 457(f)(1)(A), then, as provided in section 72, the amount includible in gross income when that property is later transferred or made available to the participant or beneficiary is the excess of the value of the property at that time over the amount previously included in gross income under section 457(f)(1)(A).

(ii) *Examples.* The provisions of this paragraph (b)(6) are illustrated by the following examples:

Example 1. (i) *Facts.* On December 1, 2017, an eligible employer agrees to transfer property that is substantially vested (within the meaning of § 1.83–3(b)) and has a fair market value equal to a specified dollar amount, to a participant on January 15, 2020. The participant's rights under the agreement are not subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B) and paragraph (e) of this section).

(ii) *Conclusion.* Because there is no substantial risk of forfeiture (within the meaning of section 457(f)(3)(B) and paragraph (e) of this section) with respect to the agreement to transfer property in 2020, the present value of the amount on the applicable date (December 1, 2017) is includible in the participant's gross income under section 457(f)(1)(A). Under paragraph (a)(4) of this section, when the substantially vested property is transferred to the participant on January 15, 2020, the amount includible in the participant's gross income is equal to the excess of the fair market value of the property on that date over the amount that was included in gross income for 2017.

Example 2. (i) *Facts.* Under a bonus plan, an eligible employer agrees in 2021 to transfer property that is substantially nonvested (within the meaning of § 1.83–3(b)) to Participants A and B in 2023 if they are continuously employed by the eligible employer through the date of the transfer (which condition constitutes a substantial risk of forfeiture within the meaning of section 457(f)(3)(B) and paragraph (e) of this section). In 2023, the eligible employer transfers the property to Participants A and B, subject to a substantial risk of forfeiture (within the meaning of § 1.83–3(c)), that lapses in 2025. Participant A makes a timely election to include the fair market value of the property in gross income under section 83(b). Participant B does not make this election.

(ii) *Conclusion.* The compensation deferred for both Participants A and B is not subject to section 457(f)(1) or paragraph (a) of this section because section 83 applies to the transfer of property on or before the date on which the property is not subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B) and paragraph (e) of this section). Because of the section 83(b) election, Participant A includes the fair market value of the property (disregarding lapse restrictions) in gross income for 2023 under section 83(b)(1). Participant B includes the value of the property in gross income when the substantial risk of forfeiture lapses in 2025 under section 83(a).

(7) *Applicable employment retention plan.* The portion of a plan that is an applicable employment retention plan as described in section 457(f)(4) with respect to any participant is not subject to the provisions of section 457(f)(1) and paragraph (a) of this section. See also section 1104(d)(4) of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), regarding the application of the Internal Revenue Code and certain other laws to any plan, arrangement, or conduct to which section 457(f)(2)(F) does not apply.

(c) *Amount included in income*—(1) *Calculation of present value*—(i) *In general.* Except as otherwise provided in this paragraph (c), the present value of compensation deferred under an ineligible plan as of an applicable date equals the present value of the future payments to which the participant has a legally binding right (as described in paragraph (d) of this section). For this purpose, present value is determined in accordance with the provisions of this paragraph (c)(1)(i) by multiplying the amount of a payment (or the amount of each payment in a series of payments) by the probability that any condition or conditions on which the payment is contingent will be satisfied and discounting the amount using an assumed rate of interest to reflect the time value of money.

(ii) *Actuarial assumptions*—(A) *In general*—(*1*) *Reasonable actuarial assumptions.* For purposes of paragraph (c)(1)(i) of this section, present value is determined using actuarial assumptions and methods that, based on all of the facts and circumstances, are reasonable as of the applicable date, including an interest rate that is reasonable as of that date and other assumptions necessary to determine the present value (without regard to whether the present value of the compensation deferred under the plan is reasonably ascertainable as described in § 31.3121(v)(2)–1(e)(4)(i)(B) of this chapter).

(*2*) *Probability of death before the payment of benefits.* For purposes of paragraph (c)(1)(i) of this section, the probability that a participant will die before a payment is made is permitted to be taken into account only to the extent that the payment is forfeitable upon death.

(*3*) *Probability that the payment will not be made.* For purposes of paragraph (c)(1)(i) of this section, the probability that payments will not be made (or will be reduced) because of the unfunded status of a plan, the risk associated with any deemed or actual investment of compensation deferred under the plan, the risk that the eligible employer or another party will be unwilling or unable to pay, the possibility of future plan amendments, the possibility of a future change in the law, or similar risks or contingencies are not taken into account.

(B) *Payments made in foreign currency.* The rules in § 1.409A–4(b)(2)(i) apply for purposes of determining the treatment of payments in foreign currency.

(C) *Treatment of payment triggers based upon events*—(*1*) *In general.* Except as provided in paragraph (c)(1)(ii)(C)(*2*) of this section, the rules in § 1.409A–4(b)(2)(vii) apply for purposes of determining the treatment of payment triggers based upon events.

(*2*) *Treatment of severance from employment.* If the date on which a payment will be made depends on the date the participant has a severance from employment (as described in § 1.457–6(b)) and the participant has not had a severance from employment by the applicable date, then for purposes of paragraph (c)(1)(ii)(A)(*1*) of this section, the severance from employment may be treated as occurring on any date that is not later than the fifth anniversary of the applicable date, unless this assumption would be unreasonable under the facts and circumstances.

(iii) *Unreasonable assumptions.* If any actuarial assumption or method used to determine the present value of compensation deferred under the plan is not reasonable, as determined by the Commissioner, then the Commissioner will determine the present value using actuarial assumptions and methods that the Commissioner determines to be reasonable, including the AFR and the applicable mortality table under section 417(e)(3)(B) as of the applicable date. For purposes of this section, *AFR* means the mid-term applicable federal rate (as defined pursuant to section 1274(d)) for January 1 of the relevant calendar year, compounded annually.

(iv) *Account balance plans*—(A) *In general.* To the extent benefits are provided under an account balance plan, as defined in § 31.3121(v)(2)–1(c)(1)(ii) and (iii) of this chapter, to which earnings (or losses, if applicable) are credited at least annually, the present value of compensation deferred under the plan as of an applicable date is the amount credited to the participant's account, including both the principal amount credited to the account and any earnings or losses attributable to the principal amount that have been credited to the account, as of that date.

(B) *Unreasonable rates of return.* This paragraph (c)(1)(iv)(B) applies to an account balance plan under which the income credited is based on neither a predetermined actual investment, within the meaning of § 31.3121(v)(2)–1(d)(2)(i)(B) of this chapter, nor a rate of interest that is reasonable, within the meaning of § 31.3121(v)(2)–1(d)(2)(i)(C) of this chapter, as determined by the Commissioner. The present value of compensation deferred under that type of plan as of an applicable date is equal to the amount credited to the participant's account as of that date, plus the present value of the excess (if any) of the earnings to be credited under the plan over the earnings that would be credited through the projected payment date using a reasonable rate of interest. If the present value of compensation deferred under the plan is not determined and is not taken into account by the taxpayer in this manner, the present value of the compensation deferred under the plan will be treated as equal to the amount credited to the participant's account as of the applicable date, plus the present value of the excess (if any) of the earnings to be credited under the plan through the projected payment date over the earnings that would be credited using the AFR.

(C) *Combinations of predetermined actual investments or interest rates.* If the amount of earnings or losses credited under an account balance plan is based on the greater of two or more rates of return (each of which would be a predetermined actual investment or a reasonable interest rate if the earnings or losses credited were based on only one of those rates of return), then the amount included in income on the applicable date is the sum of the amount credited to the participant's account as of the applicable date and the present value (determined under paragraph (c)(1)(i) of this section) of the right to future earnings.

(D) *Examples.* The following examples illustrate the provisions of paragraphs (c)(1)(i) through (iv) of this section. For purposes of these examples, assume that the arrangements are either not subject to section 409A or 457A or otherwise comply with the requirements of those provisions, and that the parties are not under examination for any of the tax years in question.

Example 1. (i) *Facts.* On October 1, 2017, an eligible employer agrees to pay $100,000 to a participant on January 1, 2024, if the participant is alive on that date. The employer determines that the October 1, 2017 present value of that payment is $75,000 based on the second segment rate used for purposes of section 417(e)(3)(C) on October 1, 2017, and using the mortality table applicable under section 417(e)(3)(B) on October 1, 2017.

(ii) *Conclusion.* The present value has been determined in accordance with paragraph (c)(1)(i) of this section.

Example 2. (i) *Facts.* On October 1, 2018, an eligible employer agrees to pay $100,000 to a participant at severance from employment. The assumptions that the employer uses to determine the present value are that the participant will have a severance from employment on October 1, 2023 (the fifth anniversary of the date the participant obtains the right to the payment in accordance with paragraph (c)(1)(ii)(C)(*2*) of this section) and that the present value will be determined using a rate of 4.5% compounded monthly.

(ii) *Conclusion.* Assuming, solely for purposes of this example, that the employer's severance from employment date and interest rate assumptions are reasonable, the value included in income on the applicable date (October 1, 2018) is $79,885.

Example 3. (i) *Facts.* On October 1, 2017, an eligible employer agrees to pay $100,000 to a participant at severance from employment, but no payment will be made if the severance from employment occurs on or after October 1, 2021.

(ii) *Conclusion.* Although paragraph (c)(1)(ii)(C)(*2*) of this section provides that for purposes of determining when a payment will be made, severance may be treated as if it occurred on the fifth anniversary of the applicable date, that assumption would be unreasonable under these facts and circumstances and would not be permitted under paragraph (c)(1)(ii)(C)(*2*) of this section. Accordingly, for purposes of determining the present value, an assumption that severance from employment would occur after September 30, 2021 would be unreasonable.

Example 4. (i) *Facts.* An eligible employer maintains a supplemental executive retirement plan that provides a subsidized early retirement benefit payable to participants between age 60 and 65. A 60 year old participant becomes vested in the right to the subsidized early retirement benefit on December 31, 2017.

(ii) *Conclusion.* The assumption under paragraph (c)(1)(ii)(C)(*2*) of this section would not be permitted for purposes of determining the amount to be included in income because the nature of the subsidized early retirement benefit causes it to decline in value until it becomes worthless upon attainment of age 65. In other words, the value of the subsidized early retirement benefit using the assumption permitted in paragraph (c)(1)(ii)(C)(*2*) of this section would result in a value of $0 and would be unreasonable under the facts and circumstances.

Example 5. (i) *Facts.* On October 1, 2017, an eligible employer agrees to provide compensation to an employee for prior services in an amount equal to $100,000, plus interest at a reasonable rate, with payment to be made at the time of the employee's severance from employment. The participant's right to the compensation is not subject to a substantial risk of forfeiture at any time.

(ii) *Conclusion.* Because the agreement provides for a reasonable rate of interest, the amount included in income on the applicable date (October 1, 2017) is $100,000.

Example 6. (i) *Facts.* The facts are the same as in *Example 5* of this paragraph (c)(1)(iv)(D), except that the right is subject to a requirement that the participant continue to provide substantial services for three additional years (which constitutes a substantial risk of forfeiture as described in paragraph (e) of this section). On October 1, 2020, when the substantial risk of forfeiture lapses, the account balance is $116,147.

(ii) *Conclusion.* The amount included in income on the applicable date (October 1, 2020) is $116,147.

Example 7. (i) *Facts.* The facts are the same as in *Example 5* of this paragraph (c)(1)(iv)(D), except that the rate of interest credited on the account is 5% above a reasonable rate of interest. On October 1, 2017, the sum of the $100,000 account balance, plus the present value of the right to receive the difference between a reasonable rate of return and the rate of return being credited on the account (from October 1, 2017 until October 1, 2022) is $128,336. The participant has a severance from employment on October 16, 2020, and is paid $135,379 on that date.

(ii) *Conclusion.* The amount included in income on the applicable date (October 1, 2017) is $128,336. Pursuant to paragraph (a)(5) of this section, the $128,336 is treated as investment in the contract for purposes of section 72 and, pursuant to paragraph (a)(4) of this section, the participant recognizes an additional $7,043 ($135,379, minus the $128,336 that was previously included in gross income for 2017) in income attributable to the payment on October 16, 2020.

Example 8. (i) *Facts.* The facts are the same as in *Example 5* of this paragraph (c)(1)(iv)(D), except that the employer also agrees to pay the participant an amount that is estimated to be equal to the federal, state, and local income taxes due (based on a fixed percentage that is pre-specified in the agreement) attributable to the amount included in income on the applicable date (October 1, 2017). In exchange for that tax payment, the amount payable upon severance from employment is to be reduced by an amount equal to the federal, state, and local income taxes for the taxable year of payment that the employer estimates would otherwise have been due but for the income inclusion in 2017. In satisfaction of this obligation to make the tax payment, the employer pays the participant $66,667 on April 15, 2018.

(ii) *Conclusion.* The present value on the applicable date (October 1, 2017) is $100,000, plus the present value of the $66,667 payment to be made on April 15, 2018, minus the present value of the reduction that will be applied at the time of payment (which, if reasonable, may be assumed to be October 1, 2022 in accordance with paragraph (c)(1)(ii)(C)(*2*) of this section).

Example 9. (i) *Facts.* An eligible employer credits $100,000 on December 31, 2017, to the account of a participant under an ineligible plan, subject to the condition that the amount will be forfeited if the participant voluntarily terminates employment before December 31, 2019. The account balance will be credited with notional annual earnings based on the greater of the return of a designated S&P 500 index fund or a specified rate of interest and will be paid on December 31, 2025.

(ii) *Conclusion.* Under paragraph (c)(1)(iv)(C) of this section, the sum of the amount credited to the participant's account as of the applicable date (December 31, 2019) and the present value (determined under paragraph (c)(1)(i) of this section) of the right to future earnings based on the greater of the return of the designated S&P 500 index fund or the specified rate of interest must be included in the participant's gross income on the applicable date.

(v) *Application of the general calculation rules to formula amounts.* With respect to a right to receive a formula amount, the amount or amounts of future payments under the plan, for purposes of determining the present value as of an applicable date, is determined based on all of the facts and circumstances existing as of that date. This determination must reflect reasonable, good faith assumptions with respect to any contingencies as to the amount of the payment, both with respect to each contingency and with respect to all contingencies in the aggregate. An assumption based on the facts and circumstances as of the applicable date may be reasonable even if the facts and circumstances change in the future so that when the amount payable is determined in a subsequent year, the amount payable is a greater (or lesser) amount. In such a case, the increase (or decrease) due to the change in the facts and circumstances is treated as earnings (or losses). For purposes of this paragraph (c)(1)(v), an amount payable is a formula amount to the extent that the amount payable in a future taxable year is dependent upon factors that, after applying the assumptions and other rules set forth in this section, are not determinable as of the applicable date, such that the amount payable may not be readily determined as of that date under the other provisions of this section. If some portion of an amount payable is not a formula amount, the amount payable with respect to such portion is determined under the rules applicable to amounts that are not formula amounts, and only the balance of the amount payable is determined under the rules applicable to formula amounts.

(vi) *Treatment of payment restrictions.* The rules in § 1.409A–4(b)(2)(v) apply for purposes of determining the treatment of payment restrictions.

(vii) *Treatment of alternative times and forms of a future payment.* The rules in § 1.409A–4(b)(2)(vi) apply for purposes of determining the treatment of alternative times and forms of a future payment.

(viii) *Reimbursement and in-kind benefit arrangements.* The rules in § 1.409A–4(b)(4) apply for purposes of determining the present value of reimbursement and in-kind benefit arrangements.

(ix) *Split-dollar life insurance arrangements.* The rules in § 1.409A–4(b)(5) apply for purposes of determining the present value of benefits provided under a split-dollar life insurance arrangement.

(2) *Forfeiture or other permanent loss of right to compensation previously included in income*—(i) *In general.* If a participant has included compensation under a plan in income pursuant to paragraph (a)(2) or (4) of this section, but all or a portion of that compensation is never paid under the plan, the participant is entitled to a deduction for the taxable year in which the entire remaining right to the payment of the compensation is permanently forfeited under the plan's terms or otherwise permanently lost. The deduction to which the participant is entitled equals the excess of the amounts included in income under paragraphs (a)(2) and (4) of this section with respect to the compensation over the total amount of the compensation actually received that constitutes investment in the contract under paragraph (a)(5) of this section.

(ii) *Forfeiture or permanent loss of right.* For purposes of this paragraph (c)(2), a mere diminution in the amount payable under the plan due to a deemed investment loss, an actuarial reduction, or any other decrease in the amount deferred under the plan is not treated as a forfeiture or permanent loss of the right if the participant retains the right to any payment under the plan (whether or not such right is subject to a substantial risk of forfeiture as described in paragraph (e) of this section). In addition, an amount payable under a plan is not treated as forfeited or otherwise permanently lost if another amount or an obligation to make a payment in a future year is substituted for the original amount. However, an amount payable under a plan is treated as permanently lost if the participant's right to receive payment of the amount becomes wholly worthless during the taxable year. Whether the right to receive payment has become wholly worthless is determined based on the relevant facts and circumstances existing as of the last day of the relevant taxable year.

(iii) *Examples.* The provisions of this paragraph (c)(2) are illustrated in the following examples:

Example 1. (i) *Facts.* On October 1, 2017, an eligible employer establishes an ineligible plan for a participant under which the employer agrees to pay the amount credited to the participant's account when the participant has a severance from employment. The obligation to make the payment is not subject to a substantial risk of forfeiture. The account balance on October 1, 2017 is $125,000, and the participant includes $125,000 in income in 2017. The plan subsequently experiences notional investment losses, and the participant receives $75,000 from the plan in a lump-sum distribution in 2024, when the participant has a severance from employment. The $75,000 lump-sum distribution represents all amounts due to the participant under the plan.

(ii) *Conclusion.* For 2024, the participant is entitled to deduct $50,000 (the excess of the amount included in income under paragraph (a)(2) of this section ($125,000) over the amount actually received that constitutes investment in the contract under paragraph (a)(5) of this section ($75,000)).

Example 2. (i) *Facts.* The facts are the same facts as in *Example 1* of this paragraph (c)(2)(iii), except that the plan provides that the participant will receive the deferred compensation in three installments (1/3 of the account balance in 2024, 1/2 of the then remaining account balance in 2025, and the remaining balance in 2026), and that the sum of all three installments is $75,000.

(ii) *Conclusion.* The participant is entitled to deduct $50,000 in the taxable year of the last installment payment (2026) ($125,000, reduced by the sum of the amounts received in 2024, 2025, and 2026 ($75,000)).

(d) *Definition of deferral of compensation*—(1) *In general*—(i) *Legally binding right.* A plan provides for the deferral of compensation with respect to a participant for purposes of section 457(f) and this section if, under the terms of the plan and the relevant facts and circumstances, the participant has a legally binding right during a calendar year to compensation that, pursuant to the terms of the plan, is or may be payable to (or on behalf of) the participant in a later calendar year. Whether a plan provides for the deferral of compensation for purposes of section 457(f) and this section is determined based on the relevant facts and circumstances at the time that the participant obtains a legally binding right to the compensation, or, if later, when a plan is amended to convert a right that does not provide for a deferral of compensation into a right that does provide for a deferral of compensation. For example, if a plan providing for retiree health care does not initially provide for a deferral of compensation but is later amended to provide the ability to receive future cash payments instead of health benefits, it may become a plan that provides for the deferral of compensation at the time of the amendment. An amount of compensation deferred under a plan that provides for the deferral of compensation within the meaning of section 457(f) and this section does not cease to be an amount subject to section 457(f) and this section by reason of any change to the plan that would otherwise recharacterize the right to the amount as a right that does not provide for the deferral of compensation with respect to such amount. In addition, any change under the plan that results in an exchange of an amount deferred under the plan for some other right or benefit that would otherwise be excluded from the participant's gross income does not affect the characterization of the plan as one that provides for a deferral of compensation.

(ii) *Discretion to reduce or eliminate compensation.* A participant does not have a legally binding right to compensation to the extent that the compensation may be reduced or eliminated unilaterally by the employer or another person after the services creating the right to the compensation have been performed. However, if the facts and circumstances indicate that the discretion to reduce or eliminate the compensation is available or exercisable only upon a condition, or the discretion to reduce or eliminate the compensation lacks substantive significance, a participant is considered to have a legally binding right to the compensation. Whether the discretion to reduce or eliminate compensation lacks substantive significance depends on all the relevant facts and circumstances. However, if the participant to whom the compensation may be paid has effective control of the person retaining the discretion to reduce or eliminate the compensation, or has effective control over any portion of the compensation of the person retaining the discretion to reduce or eliminate the compensation, or is a member of the family (as defined in section 267(c)(4) but also including the spouse of any member of the family) of the person retaining the discretion to reduce or eliminate the compensation, the discretion to reduce or eliminate the compensation is not treated as having substantive significance. Compensation is not considered subject to unilateral reduction or elimination merely because it may be reduced or eliminated by operation of the objective terms of the plan, such as the application of a nondiscretionary, objective provision creating a substantial risk of forfeiture or the application of a formula that provides for benefits to be offset by benefits provided under another plan (such as a plan that is qualified under section 401(a)).

(2) *Short-term deferrals.* For purposes of section 457(f) and this section, a deferral of compensation does not occur under a plan with respect to any payment for which a deferral of compensation does not occur under section 409A pursuant to § 1.409A–1(b)(4) (short-term deferrals), except that, for purposes of this paragraph, in applying the rules provided in § 1.409A–1(b)(4) the meaning of *substantial risk of forfeiture* under § 1.457–12(e) applies in each place that term is used (and not the meaning of *substantial risk of forfeiture* provided under § 1.409A–1(d)).

(3) *Recurring part-year compensation.* For purposes of section 457(f) and this section and notwithstanding paragraph (d)(2) of this section, a deferral of compensation does not occur under a plan with respect to an amount that is recurring part-year compensation (as defined in § 1.409A–2(a)(14)), if the plan does not defer payment of any of the recurring part-year compensation to a date beyond the last day of the 13th month following the first day of the service period for which the recurring part-year compensation is paid, and the amount of the recurring part-year compensation does not exceed the annual compensation limit under section 401(a)(17) for the calendar year in which the service period commences.

(4) *Certain other exceptions.* For purposes of section 457(f) and this section, a deferral of compensation does not occur to the extent that a plan provides for:

(i) The payment of expense reimbursements, medical benefits, or in-kind benefits, as described in § 1.409A–1(b)(9)(v)(A), (B), or (C);

(ii) Certain indemnification rights, liability insurance, or legal settlements, as described in § 1.409A–1(b)(10), or (11); or

(iii) Taxable educational benefits for an employee (which, for this purpose, means solely benefits consisting of educational assistance, as defined in section 127(c)(1) and the regulations thereunder, attributable to the education of an employee, and does not include any benefits provided for the education of any other person, including any spouse, child, or other family member of the employee).

(5) *Interaction with section 409A*—(i) *In general.* The rules of section 457(f) apply to an ineligible plan separately and in addition to any requirements applicable to the plan under section 409A.

(ii) *Acceleration of the time or schedule of a payment.* Although section 457(f) and this section do not preclude the acceleration of payments, see § 1.409A–3(a) for the general rules and exceptions relating to the acceleration of payments that are subject to section 409A.

(iii) *Example.* The provisions of this paragraph (d)(5) are illustrated in the following example:

Example. (i) *Facts.* On December 1, 2017, an eligible employer establishes an account balance plan for an employee that is subject to section 457(f), under which an initial amount is credited to the account and is increased periodically by earnings based on a reasonable specified rate of interest. The entire account balance is subject to a substantial risk of forfeiture until December

1, 2021. Under the terms of the plan, the account balance will be paid in three annual installments on each January 15, beginning in 2024 (one third of the balance for the first installment, one half of the then remaining balance for the second installment, and the remaining balance for the third installment). However, in 2022, the plan is amended to provide for payments to begin in 2023, such that the plan fails to comply with the requirements of section 409A during 2022. The account balance is: $100,000 on December 1, 2021; $118,000 on December 31, 2022; $120,000 on January 15, 2023 (so that the payment made that day is $40,000 ($120,000/3)); $88,000 on January 15, 2024 (so that the payment made that day is $44,000 ($88,000/2)); and $50,000 on January 15, 2025 (so that the payment made that day is $50,000).

(ii) *Conclusion: Federal income tax treatment in 2021.* The plan provides for a deferral of compensation to which section 457(f) applies. Under section 457(f) and paragraph (a)(2) of this section, the $100,000 amount of the account balance on December 1, 2021, when the benefits cease to be subject to a substantial risk of forfeiture, is included in the employee's gross income on that date.

(iii) *Conclusion: Federal income tax treatment after 2021*—(*1*) *Treatment in 2022 under section 409A.* Because the arrangement fails to meet the requirements of section 409A in 2022, the employee has gross income under section 409A equal to the account balance on December 31, 2022, reduced by the amount previously included in income. Accordingly, the amount included in gross income under section 409A is equal to $18,000 (the $118,000 account balance on December 31, 2022, reduced by the $100,000 previously included in income under section 457(f) for 2021). The amount included in gross income under section 409A is subject to an additional 20 percent tax under section 409A(a)(1)(B)(i)(II) and a premium interest tax under section 409A(a)(1)(B)(i)(I).

(*2*) *Federal income tax treatment of first installment payment in 2023*—(*i*) *Earnings previously included under section 409A.* The first $18,000 of the $40,000 payment in 2023 is excluded from gross income under section 409A as a result of the earlier inclusion of that amount in income in 2022 due to the section 409A violation. See § 1.409A–4(f).

(*ii*) *Deferral of compensation under section 457(f).* The amount of the investment in the contract (described in paragraph (a)(5) of this section) allocated to the remaining $22,000 of the installment paid in 2023 is $33,333 ($100,000/3), so no amount is included in gross income for 2023.

(*3*) *Federal income tax treatment of second installment payment in 2024.* The employee has unused investment in the contract from 2023 in the amount of $11,333 ($33,333–$22,000). Assuming that the employee elects to redetermine the amount recognized for the current and subsequent years in 2024 pursuant to § 1.72–4(d)(3)(ii), the amount included in gross income for 2024 is $5,000 (the payment of $44,000, reduced by the portion of the remaining investment in the contract that is allocable to the installment, which is $39,000 (($100,000–$22,000)/2)).

(*4*) *Federal income tax treatment of third installment payment in 2025.* The amount included in gross income for 2025 is $11,000 (the payment of $50,000, reduced by the remaining investment in the contract of $39,000).

(e) *Rules relating to substantial risk of forfeiture*—(1) *Substantial risk of forfeiture*—(i) *In general.* An amount of compensation is subject to a substantial risk of forfeiture only if entitlement to the amount is conditioned on the future performance of substantial services, or upon the occurrence of a condition that is related to a purpose of the compensation if the possibility of forfeiture is substantial. An amount is not subject to a substantial risk of forfeiture if the facts and circumstances demonstrate that the forfeiture condition is unlikely to be enforced (see paragraph (e)(1)(v) of this section). If a plan provides that entitlement to an amount is conditioned on involuntary severance from employment without cause (which includes, for this purpose, a voluntary severance from employment that is treated as involuntary under § 1.457–11(d)(2)(ii)), the right is subject to a substantial risk of forfeiture if the possibility of forfeiture is substantial.

(ii) *Substantial future services.* For purposes of paragraph (e)(1)(i) of this section, the determination of whether an amount of compensation is conditioned on the future performance of substantial services is based on the relevant facts and circumstances, such as whether the hours required to be performed during the relevant period are substantial in relation to the amount of compensation.

(iii) *Condition related to a purpose of the compensation.* For purposes of paragraph (e)(1)(i) of this section, a condition related to a purpose of the compensation must relate to the participant's performance of services for the employer or to the employer's governmental or tax-exempt activities (as applicable) or organizational goals.

(iv) *Noncompetition conditions.* For purposes of paragraph (e)(1)(i) of this section, an amount of compensation will not be treated as subject to a substantial risk of forfeiture merely because the right to payment of the amount is conditioned, directly or indirectly, upon the employee refraining from the future performance of certain services, unless each of the of the following conditions is satisfied:

(A) The right to payment of the amount is expressly conditioned upon the employee refraining from the future performance of services pursuant to an enforceable written agreement.

(B) The employer makes reasonable ongoing efforts to verify compliance with noncompetition agreements (including the noncompetition agreement applicable to the employee).

(C) At the time that the enforceable written agreement becomes binding, the facts and circumstances demonstrate that the employer has a substantial and bona fide interest in preventing the employee from performing the prohibited services and that the employee has bona fide interest in, and ability to, engage in the prohibited competition. Factors taken into account for this purpose include the employer's ability to show significant adverse economic consequences that would likely result from the prohibited services; the marketability of the employee based on specialized skills, reputation, or other factors; and the employee's interest, financial need, and ability to engage in the prohibited services.

(v) *Enforcement of forfeiture condition.* To constitute a substantial risk of forfeiture, the possibility of actual forfeiture in the event that the forfeiture condition occurs must be substantial based on the relevant facts and circumstances. Factors to be considered for this purpose include, but are not limited to, the extent to which the employer has enforced forfeiture conditions in the past, the level of control or influence of the employee with respect to the organization and the individual(s) who would be responsible for enforcing the forfeiture condition, and the likelihood that such provisions would be enforceable under applicable law.

(2) *Addition or extension of risk of forfeiture*—(i) *General rule.* The initial addition or extension of any risk of forfeiture after a legally binding right to compensation arises, including the application of a risk of forfeiture to a plan providing for deferrals of current compensation (an additional or extended risk of forfeiture), will be disregarded unless the plan meets the requirements of paragraphs (e)(2)(ii) through (v) of this section.

(ii) *Benefit must be materially greater.* A deferred amount will not be subject to a substantial risk of forfeiture for purposes of section 457 and this section after the date on which an employee could have received the amount, unless the present value of the amount made subject to the additional or extended substantial risk of forfeiture (disregarding the risk of forfeiture in determining the present value of the amount) is materially greater than the present value of the amount the employee otherwise would have received absent the initial or extended risk of forfeiture. For purposes of this paragraph (e)(2)(ii), present value is determined in accordance with the rules described in paragraph (c) of this section as of the applicable date for the amount the employee otherwise would have received absent the initial or extended risk of forfeiture. In addition, an amount is materially greater for purposes of this paragraph (e)(2)(ii) only if the present value of the amount subject to the additional or extended substantial risk of forfeiture is more than 125 percent of the present value of the amount that the employee would have received absent the additional or extended risk of forfeiture. For this purpose, compensation that the participant would receive for continuing to perform services, regardless of whether the deferred amount is subjected to an additional or extended substantial risk of forfeiture, is not taken into account.

(iii) *Minimum two years of substantial future services.* The employee must be required to perform substantial services in the future, or refrain from competing pursuant to an agreement that meets the requirements of paragraph (e)(1)(iv) of this section, for a minimum of two years after the date that the employee could have received the compensation in the absence of the additional or extended substantial risk of forfeiture. For example, if an employee elects to defer a fixed percentage from each semi-monthly payroll, the two year minimum applies to each semi-monthly payroll amount that would otherwise have been paid. Notwithstanding the two year minimum, a plan may provide that that the substantial future service condition will lapse upon death, disability, or involuntary severance from employment without cause.

(iv) *Timing.* The parties must agree in writing to any addition or extension of a substantial risk of forfeiture under this paragraph (e)(2). In the case of an initial addition of a substantial risk of forfeiture if none previously existed (for example, in the case of a deferral of current compensation), this written agreement must be entered into before the beginning of the calendar year in which any services that give rise to the compensation are performed, and, in the case of an extension of a substantial risk of forfeiture, the written agreement must be entered into at least 90 days before an existing substantial risk of forfeiture would have lapsed. If an employee with respect to whom compensation is made subject to an initial or extended substantial risk of forfeiture was not providing services to the employer at least 90 days before the addition or extension, the addition or extension may be agreed to in writing within 30 days after commencement of employment but only with respect to amounts attributable to services rendered after the addition or extension is agreed to in writing.

(v) *Substitutions.* For purposes of paragraph (e)(2) of this section, if an amount is forfeited or relinquished and replaced, in whole or part, with a right to another amount (or benefit) that is a substitute for the amount that was forfeited or relinquished and that is subject to a risk of forfeiture, the risk of forfeiture will be disregarded unless the requirements of paragraphs (e)(2)(ii) through (iv) of this section are satisfied.

(3) *Examples.* The provisions of this paragraph (e) are illustrated in the following examples:

Example 1. (i) *Facts.* On January 15, 2017, an employee has a severance from employment with an eligible employer and enters into an agreement with the eligible employer under which the eligible employer agrees to pay the employee $250,000 on January 15, 2018, if the employee provides consulting services to the employer until that date. The consulting services required are insubstantial in relation to the payment. The employee provides the required consulting services for the employer through January 15, 2018.

(ii) *Conclusion.* The consulting services provided by the former employee do not constitute substantial services because they are insubstantial in relation to the payment. Accordingly, the present value of $250,000 payable on January 15, 2018 is includible in the employee's gross income on January 15, 2017.

Example 2. (i) *Facts.* On January 27, 2020, an eligible employer agrees to pay an employee an amount equal to $120,000 on January 1, 2023, provided that the employee continues to provide substantial services to the employer through that date. In 2021, the parties enter into a written agreement to extend the date through which substantial services must be performed to January 1, 2025, in which event, the employer will pay an amount that has a present value of $145,000 on January 1, 2023.

(ii) *Conclusion.* As of the date the initial risk of forfeiture would have lapsed, the present value of the compensation subject to the extended substantial risk of forfeiture is not materially greater than the present value of the amount previously deferred under the plan ($145,000 is not more than 125% of $120,000) and, therefore, the intended extension of the substantial risk of forfeiture is disregarded under the provisions of paragraph (e)(2) of this section. Accordingly, the employee will recognize income, on the applicable date (January 1, 2023) in an amount equal to $120,000 (the amount that is not subject to a substantial risk of forfeiture on that date, disregarding the intended extension). With respect to the amount that is ultimately paid under the plan on January 1, 2025, the employee is treated as having investment in the contract of $120,000 (pursuant to paragraph (a)(5) of this section).

Example 3. (i) *Facts.* On December 31, 2017, a participant enters into an agreement to defer $15,000 of the participant's current compensation that would otherwise be paid during 2018, with payment of the deferred amounts to be made on December 31, 2024, but only if the participant continues to provide substantial services until December 31, 2024. Under the terms of the agreement, the participant's periodic payments of current compensation are reduced, and a corresponding amount is credited (with a 30% employer match) to an account earning a reasonable rate of interest. The present value of the amount payable on December 31, 2024 is 130% of the present value of the amount deferred.

(ii) *Conclusion.* The amounts deferred are subject to a substantial risk of forfeiture because the plan satisfies the requirements of paragraphs (e)(2)(ii) through (v) of this section.

Example 4. (i) *Facts.* Employee A is a well-known college sports coach with a long history of success in a sports program at University X. University X reasonably expects that the loss of Employee A would be substantially detrimental to its sports program and would result in significant financial losses. Employee A has bona fide interest in continuing to work as a college sports coach and is highly marketable. On June 1, 2020, Employee A and University X enter into a written agreement under which Employee A agrees to provide substantial services to University X until June 1, 2023. The parties further agree that University X will pay $500,000 to Employee A on June 1, 2025 if Employee A has not performed services as a sports coach before that date for any other college or university with a sports program similar to that of University X. The agreement is enforceable under applicable law and University X would be reasonably expected to enforce it.

(ii) *Conclusion.* The $500,000 payable under the agreement is subject to a substantial risk of forfeiture until June 1, 2025, and includible in Employee A's gross income on that date.

■ **Par. 12.** Newly-designated § 1.457–13 is revised to read as follows:

§ 1.457–13 Applicability dates.

(a) *General applicability date.* Except as otherwise provided in paragraph (b) of this section, §§ 1.457–1 through 1.457–12 apply to compensation deferred under a plan for calendar years beginning after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, including deferred amounts to which the legally binding right arose during prior calendar years that were not previously included in income during one or more prior calendar years.

(b) *Special applicability dates*—(1) *Plans maintained pursuant to collective bargaining agreements.* In the case of a plan maintained pursuant to one or more collective bargaining agreements that have been ratified and are in effect on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, these regulations will not apply with respect to compensation deferred under the plan before the earlier of:

(i) The date on which the last of the collective bargaining agreements terminates (determined without regard to any extension thereof after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**); or

(ii) The first day of the third calendar year beginning after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

(2) *Governmental plans.* If legislation is required to amend a governmental plan, these regulations will not apply to compensation deferred under that plan in taxable years ending before the day following the end of the second legislative session of the legislative body with the authority to amend the plan that begins after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–14329 Filed 6–21–16; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–123854–12]

RIN 1545–BL25

Application of Section 409A to Nonqualified Deferred Compensation Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would clarify or modify certain specific provisions of the final regulations under section 409A (TD 9321, 72 FR 19234). This document also withdraws a specific provision of the notice of proposed rulemaking (REG–148326–05) published in the **Federal Register** on December 8, 2008 (73 FR 74380) regarding the calculation of amounts includible in income under section 409A(a)(1) and replaces that provision with revised proposed regulations. These proposed regulations would affect participants, beneficiaries, sponsors, and administrators of nonqualified deferred compensation plans.

DATES: Comments and requests for a public hearing must be received by September 20, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–123854–12), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday, between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–123854–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically, via the Federal Rulemaking Portal at *www.regulations.gov* (IRS REG–123854–12).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations under section 409A, Gregory Burns at (202) 927–9639, concerning submission of comments and/or requests for a hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 885 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (AJCA '04) added section 409A to the Internal Revenue Code (Code). Section 409A(a)(1)(A) generally provides that, if certain requirements are not met at any time during a taxable year, amounts deferred under a nonqualified deferred compensation plan for that year and all previous taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

On April 17, 2007 (72 FR 19234), the Treasury Department and the IRS issued final regulations under section 409A (TD 9321), which include §§ 1.409A–1, 1.409A–2, 1.409A–3, and 1.409A–6 (the final regulations). The final regulations define certain terms used in section 409A and in the final regulations, set forth the requirements for deferral elections and for the time and form of payments under nonqualified deferred compensation plans, and address certain other issues under section 409A.

On December 8, 2008 (73 FR 74380), the Treasury Department and the IRS issued additional proposed regulations under section 409A (REG–148326–05), which include proposed § 1.409A–4 (the proposed income inclusion regulations). The proposed income inclusion regulations provide guidance regarding the calculation of amounts includible in income under section 409A(a)(1) and the additional taxes imposed by section 409A with respect to service providers participating in certain nonqualified deferred compensation plans and other arrangements that do not comply with the requirements of section 409A(a).

Explanation of Provisions

I. Overview

The Treasury Department and the IRS have concluded that certain clarifications and modifications to the final regulations and the proposed income inclusion regulations will help taxpayers comply with the requirements of section 409A. These proposed regulations address certain specific provisions of the final regulations and the proposed income inclusion regulations and are not intended to propose a general revision of, or broad changes to, the final regulations or the proposed income inclusion regulations. The narrow and specific purpose of these proposed regulations should be taken into account when submitting comments on these proposed regulations. As provided in the section of this preamble titled "Proposed Effective Dates," taxpayers may rely upon these proposed regulations immediately.

These proposed regulations:

(1) Clarify that the rules under section 409A apply to nonqualified deferred compensation plans separately and in addition to the rules under section 457A.

(2) Modify the short-term deferral rule to permit a delay in payments to avoid violating Federal securities laws or other applicable law.

(3) Clarify that a stock right that does not otherwise provide for a deferral of compensation will not be treated as providing for a deferral of compensation solely because the amount payable under the stock right upon an involuntary separation from service for cause, or the occurrence of a condition within the service provider's control, is based on a measure that is less than fair market value.

(4) Modify the definition of the term "eligible issuer of service recipient stock" to provide that it includes a corporation (or other entity) for which a person is reasonably expected to begin, and actually begins, providing services within 12 months after the grant date of a stock right.

(5) Clarify that certain separation pay plans that do not provide for a deferral of compensation may apply to a service provider who had no compensation from the service recipient during the year preceding the year in which a separation from service occurs.

(6) Provide that a plan under which a service provider has a right to payment or reimbursement of reasonable attorneys' fees and other expenses incurred to pursue a bona fide legal claim against the service recipient with respect to the service relationship does not provide for a deferral of compensation.

(7) Modify the rules regarding recurring part-year compensation.

(8) Clarify that a stock purchase treated as a deemed asset sale under section 338 is not a sale or other disposition of assets for purposes of determining whether a service provider has a separation from service.

(9) Clarify that a service provider who ceases providing services as an employee and begins providing services as an independent contractor is treated as having a separation from service if, at the time of the change in employment status, the level of services reasonably anticipated to be provided after the change would result in a separation from service under the rules applicable to employees.

(10) Provide a rule that is generally applicable to determine when a "payment" has been made for purposes of section 409A.

(11) Modify the rules applicable to amounts payable following death.

(12) Clarify that the rules for transaction-based compensation apply to stock rights that do not provide for a deferral of compensation and statutory stock options.

(13) Provide that the addition of the death, disability, or unforeseeable emergency of a beneficiary who has become entitled to a payment due to a service provider's death as a potentially earlier or intervening payment event will not violate the prohibition on the acceleration of payments.

(14) Modify the conflict of interest exception to the prohibition on the acceleration of payments to permit the payment of all types of deferred compensation (and not only certain types of foreign earned income) to comply with bona fide foreign ethics or conflicts of interest laws.

(15) Clarify the provision permitting payments upon the termination and liquidation of a plan in connection with bankruptcy.

(16) Clarify other rules permitting payments in connection with the termination and liquidation of a plan.

(17) Provide that a plan may accelerate the time of payment to comply with Federal debt collection laws.

(18) Clarify and modify § 1.409A–4(a)(1)(ii)(B) of the proposed income inclusion regulations regarding the treatment of deferred amounts subject to a substantial risk of forfeiture for purposes of calculating the amount includible in income under section 409A(a)(1).

(19) Clarify various provisions of the final regulations to recognize that a service provider can be an entity as well as an individual.

II. Deferral of Compensation

A. Section 457(f) and Section 457A Plans

Section 457(f) generally provides that compensation deferred under a plan of an eligible employer (as that term is defined under section 457) is included in gross income in the first taxable year in which there is no substantial risk of forfeiture of the rights to the compensation. The final regulations provide that a deferred compensation plan subject to section 457(f) may be a nonqualified deferred compensation plan for purposes of section 409A and that the rules of section 409A apply to deferred compensation plans separately and in addition to any requirements applicable to such plans under section 457(f).

Similarly, section 457A, which was enacted more than a year after publication of the final regulations, generally provides that any compensation deferred under a nonqualified deferred compensation plan of a nonqualified entity (as these terms are defined under section 457A) is includible in gross income when there is no substantial risk of forfeiture of the rights to the compensation. These proposed regulations clarify that a nonqualified deferred compensation plan under section 457A, like a deferred compensation plan under section 457(f), may be a nonqualified deferred compensation plan for purposes of section 409A and that the rules of section 409A apply to such a plan separately and in addition to any requirements applicable to the plan under section 457A.

B. Short-Term Deferral Rule

The final regulations provide that a deferral of compensation does not occur for purposes of section 409A under a plan with respect to any payment that is not a deferred payment[1] provided that the service provider actually or constructively receives the payment on or before the later of: (1) The 15th day of the third month following the end of the service provider's first taxable year in which the right to the payment is no longer subject to a substantial risk of forfeiture, or (2) the 15th day of the third month following the end of the service recipient's first taxable year in which the right to the payment is no longer subject to a substantial risk of forfeiture (the applicable 2½ month period). A payment that meets these requirements of the short-term deferral rule (described more fully in § 1.409A–1(b)(4)) is referred to as a short-term deferral and is generally exempt from the requirements applicable to plans that provide for a deferral of compensation.

The final regulations provide that a payment that otherwise qualifies as a short-term deferral, but is made after the applicable 2½ month period, may continue to qualify as a short-term deferral if the payment is delayed for one of three reasons: (1) The taxpayer establishes that it was administratively impracticable for the service recipient to make the payment by the end of the applicable 2½ month period; (2) making the payment by the end of the applicable 2½ month period would have jeopardized the service recipient's ability to continue as a going concern; or (3) the service recipient reasonably anticipates that a deduction for the payment would not be permitted under section 162(m).

Similar exceptions apply under the general time and form of payment rules of section 409A. Under § 1.409A–3(d), a payment is treated as made on the date specified under the plan if the payment is delayed due to administrative impracticability or because making the payment would jeopardize the ability of the service recipient to continue as a going concern. Under § 1.409A–2(b)(7), a payment may be delayed to a date after the payment date designated in a plan without failing to meet the requirements of section 409A(a) if the service recipient reasonably anticipates that a deduction for the payment would not be permitted under section 162(m) or if making the payment would violate Federal securities laws or other applicable law. Together, these rules generally permit payments under section 409A to be delayed due to administrative impracticability or because making the payment would jeopardize the ability of the service recipient to continue as a going concern, the payment would not be deductible under section 162(m), or making the payment would violate Federal securities laws or other applicable law.

Some commenters have suggested that the exception for payments that would violate Federal securities laws or other applicable law should also apply to payments that are intended to be short-term deferrals. These commenters have noted that the policy reasons for excusing a timely payment when the payment would violate Federal securities laws or other applicable law apply equally to the general time and form of payment rules under section 409A and the short-term deferral rule. In response to these comments, the Treasury Department and the IRS have determined that it is appropriate to extend this exception to the short-term deferral rule. Accordingly, these proposed regulations provide that a payment that otherwise qualifies as a short-term deferral, but is made after the end of the applicable 2½ month period, may still qualify as a short-term deferral if the service recipient reasonably anticipates that making the payment during the applicable 2½ month period will violate Federal securities laws or other applicable law and the payment is made as soon as reasonably practicable following the first date on which the service recipient anticipates or reasonably should anticipate that making the payment would not cause a violation. For this purpose, making a payment that would cause inclusion in gross income or the application of any penalty provision or other provision of the Code is not treated as a violation of applicable law.

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[1] Under § 1.409A–1(b)(4)(i)(D), a payment is a deferred payment if it is made pursuant to a provision of a plan that provides for the payment to be made or completed on or after any date, or upon the occurrence of any event, that will or may occur later than the end of the applicable 2½ month period.

C. Stock Rights

1. Service Recipient Stock

The final regulations provide that certain stock options and stock appreciation rights (collectively, stock rights) granted with respect to service recipient stock do not provide for the deferral of compensation. The term "service recipient stock" means a class of stock that, as of the date of grant, is common stock for purposes of section 305 and the regulations thereunder of a corporation that is an eligible issuer of service recipient stock. For this purpose, service recipient stock does not include any stock that is subject to a mandatory repurchase obligation (other than a right of first refusal), or a permanent put or call right, if the stock price under such right or obligation is based on a measure other than the fair market value (disregarding lapse restrictions) of the equity interest in the corporation represented by the stock.

Commenters have noted that employers often want to deter employees from engaging in behavior that could be detrimental to the employer and have customarily reduced the amount that an employee receives under a stock rights arrangement if the employee is dismissed for cause or violates a noncompetition or nondisclosure agreement. These commenters have observed that this type of reduction is generally prohibited under the definition of service recipient stock in the final regulations but have argued that neither the statutory language nor the underlying policies of section 409A should prohibit a reduction under these circumstances. The Treasury Department and the IRS agree with these conclusions. Accordingly, these proposed regulations provide that a stock price will not be treated as based on a measure other than fair market value if the amount payable upon a service provider's involuntary separation from service for cause, or the occurrence of a condition that is within the control of the service provider, such as the violation of a covenant not to compete or a covenant not to disclose certain information, is based on a measure that is less than fair market value.

2. Eligible Issuer of Service Recipient Stock

Under the final regulations, the term "eligible issuer of service recipient stock" means the corporation or other entity for which the service provider provides direct services on the date of grant of the stock right and certain affiliated corporations or entities. Some commenters have asserted that this definition of "eligible issuer of service recipient stock" hinders employment negotiations because it prevents service recipients from granting stock rights to service providers before they are employed by the service recipient. In response to these comments, these proposed regulations provide that, if it is reasonably anticipated that a person will begin providing services to a corporation or other entity within 12 months after the date of grant of a stock right, and the person actually begins providing services to the corporation or other entity within 12 months after the date of grant (or, if services do not begin within that period, the stock right is forfeited), the corporation or other entity will be an eligible issuer of service recipient stock.

D. Separation Pay Plans

Under the final regulations, separation pay plans that provide for payment only upon an involuntary separation from service or pursuant to a window program do not provide for a deferral of compensation to the extent that they meet certain requirements. One of these requirements is that the separation pay generally not exceed two times the lesser of (1) the service provider's annualized compensation based upon the annual rate of pay for the service provider's taxable year preceding the service provider's taxable year in which the separation from service occurs, or (2) the limit under section 401(a)(17) for the year in which the service provider separates from service.

Some commenters have questioned whether this exception for separation pay plans is available for a service provider whose employment begins and ends during the same taxable year because the service provider was not employed by, and did not receive any compensation from, the service recipient for the taxable year preceding the taxable year in which the separation from service occurs. These proposed regulations clarify that the separation pay plan exception is available for service providers whose employment begins and ends in the same taxable year. In that circumstance, these proposed regulations provide that the service provider's annualized compensation for the taxable year in which the service provider separates from service may be used for purposes of this separation pay plan exception if the service provider had no compensation from the service recipient in the taxable year preceding the year in which the service provider separates from service.

E. Employment-Related Legal Fees and Expenses

Under the final regulations, an arrangement does not provide for a deferral of compensation to the extent that it provides for amounts to be paid as settlements or awards resolving *bona fide* legal claims based on wrongful termination, employment discrimination, the Fair Labor Standards Act, or workers' compensation statutes, including claims under applicable Federal, state, local, or foreign laws, or for reimbursements or payments of reasonable attorneys' fees or other reasonable expenses incurred by the service provider related to such *bona fide* legal claims.

Commenters have requested guidance on the application of section 409A(a) to provisions commonly included in employment agreements that provide for the reimbursement of attorneys' fees in connection with employment-related disputes and have asserted that there is no reason to distinguish between arrangements that provide for payment of reasonable attorneys' fees and expenses for the types of legal claims currently specified in the final regulations and any other *bona fide* legal claim with respect to the service relationship between a service provider and a service recipient. In response to these comments, these proposed regulations provide that an arrangement does not provide for a deferral of compensation to the extent that it provides for the payment or reimbursement of a service provider's reasonable attorneys' fees and other expenses incurred to enforce a claim by the service provider against the service recipient with respect to the service relationship.

F. Recurring Part-Year Compensation

After publication of the final regulations, commenters have expressed concerns about the application of section 409A to recurring part-year compensation. The final regulations define recurring part-year compensation as compensation paid for services rendered in a position that the service recipient and service provider reasonably anticipate will continue on similar terms and conditions in subsequent years, and will require services to be provided during successive service periods each of which comprises less than 12 months and each of which begins in one taxable year of the service provider and ends in the next taxable year. For example, a teacher providing services during school years comprised of 10 consecutive months would have recurring part-year compensation. See § 1.409A–2(a)(14). In general, commenters have asserted that section 409A should not apply to this situation because the amount being deferred from one taxable year to a subsequent taxable year is typically only a small amount and because most service providers who receive recurring part-year compensation (typically teachers and other educational workers) view an election to annualize this compensation as a cash flow decision, rather than a tax-deferral opportunity.

In response, the Treasury Department and the IRS issued Notice 2008–62 (2008–29 IRB 130), which provides that arrangements involving recurring part-year compensation do not provide for a deferral of compensation for purposes of section 409A or section 457(f) if: (1) The arrangement does not defer payment of any of the recurring part-year compensation beyond the last day of the 13th month following the beginning of the service period, and (2) the arrangement does not defer from one taxable year to the next taxable year the payment of more than the applicable dollar amount under section 402(g)(1)(B) in effect for the calendar year in which the service period begins ($18,000 for 2016). Notice 2008–62 also states that a conforming change is intended be made to the final regulations to reflect these rules.

Commenters have expressed concerns that Notice 2008–62 would not adequately address some teaching positions, such as college and university faculty members. They have noted that, depending on several variables (such as the calendar month in which a service provider commences service or the length of the service period), the dollar limitation in the notice may result in adverse tax consequences to service providers with annual compensation as low as $80,000. Commenters have further observed that some of these arrangements are nonelective, and therefore some service providers cannot opt out of a recurring part-year compensation arrangement. In recognition that service recipients in the field of education frequently structure their pay plans to include recurring part-year compensation and that the main purpose of this design is to provide uninterrupted cash flow for service providers who do not work for a portion of the year, these proposed regulations modify the recurring part-year compensation rule. These proposed regulations provide that a plan or arrangement under which a service provider receives recurring part-year compensation that is earned over a period of service does not provide for the deferral of compensation if the plan does not defer payment of any of the recurring part-year compensation to a date beyond the last day of the 13th month following the first day of the service period for which the recurring part-year compensation is paid, and the amount of the service provider's recurring part-year compensation (not merely the amount deferred) does not exceed the annual compensation limit under section 401(a)(17) ($265,000 for 2016) for the calendar year in which the service period commences. A conforming change is being made for purposes of section 457(f) under proposed section 457(f) regulations (REG–147196–07) that are also published in the Proposed Rules section of this issue of the **Federal Register**.

III. Separation From Service Definition

A. Asset Purchase Transactions

The final regulations permit the seller and an unrelated buyer in an asset purchase transaction to specify whether a person who is a service provider of the seller immediately before the transaction is treated as separating from service if the service provider provides services to the buyer after and as a result of the transaction. Commenters have asked whether this rule may be used with respect to a transaction that is treated as a deemed asset sale under section 338.

The provision of the final regulations giving buyers and sellers in asset transactions the discretion to treat employees as separating from service is based on the recognition that, while employees formally terminate employment with the seller and immediately recommence employment with the buyer in a typical asset transaction, the employees often experience no change in the type or level of services they provide. In a deemed asset sale under section 338, however, employees do not experience a termination of employment, formal or otherwise. Accordingly, the Treasury Department and the IRS have determined that it would be inconsistent with section 409A to permit the parties to a deemed asset sale to treat service providers as having separated from service upon the occurrence of the transaction. These proposed regulations affirm and make explicit that a stock purchase transaction that is treated as a deemed asset sale under section 338 is not a sale or other disposition of assets for purposes of this rule under section 409A.

B. Dual Status as Employee and Independent Contractor and Changes in Status From Employee to Independent Contractor (or Vice Versa)

The final regulations provide that an employee separates from service with an employer if the employee dies, retires, or otherwise has a termination of employment with the employer. Under the final regulations, a termination of employment generally occurs if the facts and circumstances indicate that the employer and employee reasonably anticipate that no further services would be performed after a certain date or that the level of *bona fide* services the employee would perform after that date (whether as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of *bona fide* services performed (whether as an employee or an independent contractor) over the immediately preceding 36-month period (or if the employee has been providing services to the employer for less than 36 months, the full period of services). The final regulations provide that an independent contractor separates from service with a service recipient upon the expiration of the contract (or, if applicable, all contracts) under which services are performed for the service recipient if the expiration is a good-faith and complete termination of the contractual relationship.

The final regulations also provide that if a service provider provides services both as an employee and an independent contractor of a service recipient, the service provider must separate from service both as an employee and as an independent contractor to be treated as having separated from service. The final regulations further provide that "[i]f a service provider ceases providing services as an independent contractor and begins providing services as an employee, or ceases providing services as an employee and begins providing services as an independent contractor, the service provider will not be considered to have a separation from service until the service provider has ceased providing services in both capacities."

Some commenters have observed that the quoted sentence could be read to provide that a service provider who performs services for a service recipient as an employee, but who becomes an independent contractor for the same service recipient and whose anticipated level of services upon becoming an independent contractor are 20 percent or less than the average level of services performed during the immediately preceding 36-month period, would not have a separation from service because a complete termination of the contractual relationship with the service recipient has not occurred and, therefore, there is no separation from service as an independent contractor. Such a reading, however, would be inconsistent with the more specific rule that a service provider who is an employee separates from service if the employer and employee reasonably anticipate that the level of services to be performed after a certain date (whether as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of services performed (whether as an employee or an independent contractor) over the immediately preceding 36-month period. To avoid potential confusion, these proposed regulations delete the quoted sentence from the regulations.

However, if a service provider, who performs services for a service recipient as an employee, becomes an independent contractor for the same service recipient but does not have a separation from service when he or she becomes an independent contractor (because at that time it is not reasonably anticipated that the level of services that would be provided by the service provider in the future would decrease to no more than 20 percent of the average level of services performed over the immediately preceding 36-month period), the service provider will have a separation from service in the future when the service provider has a separation from service based on the rules that apply to independent contractors.

IV. References to a Payment Being Made

As discussed in section II.B of this preamble entitled "Short-term Deferral Rule," the final regulations provide that a deferral of compensation does not occur under a plan if the service provider actually or constructively receives a payment that is not a deferred payment on or before the last day of the applicable 2½ month period. The final regulations further provide that, for this purpose, a payment is treated as actually or constructively received if the payment is includible in income, including if the payment is includible under the economic benefit doctrine, section 83, section 402(b), or section 457(f). Further, § 1.409A–2(b)(2) of the final regulations provides that, for purposes of subsequent changes in the time or form of payment, the term "payment" generally refers to each separately identified amount to which a service provider is entitled to payment under a plan on a determinable date. This section of the final regulations provides that a payment includes the provision of any taxable benefit, including cash or property. It also provides that a payment includes, but is not limited to, the transfer, cancellation, or reduction of an amount of deferred compensation in exchange for benefits under a welfare plan, a fringe benefit excludible from income, or any other benefit excludible from income. The final regulations, however, do not include a rule that is generally applicable for all purposes under section 409A to determine when a payment is made.

These proposed regulations add a generally applicable rule to determine when a payment has been made for all provisions of the regulations under section 409A. Under these proposed regulations, a payment is made, or the payment of an amount occurs, when any taxable benefit is actually or constructively received. Consistent with the final regulations, these proposed regulations provide that a payment includes a transfer of cash, any event that results in the inclusion of an amount in income under the economic benefit doctrine, a transfer of property includible in income under section 83, a contribution to a trust described in section 402(b) at the time includible in income under section 402(b), and the transfer or creation of a beneficial interest in a section 402(b) trust at the time includible in income under section 402(b). In addition, a payment is made upon the transfer, cancellation, or reduction of an amount of deferred compensation in exchange for benefits under a welfare plan, a non-taxable fringe benefit, or any other nontaxable benefit.

The final regulations generally provide that the inclusion of an amount in income under section 457(f)(1)(A) is treated as a payment under section 409A for purposes of the short-term deferral rule under § 1.409A–1(b)(4), but is generally not treated as a payment for other purposes under section 409A. Commenters, however, have observed that this treatment of income inclusion under section 457(f)(1)(A) is inconsistent with the rules under section 409A that generally treat the inclusion of any amount in income as a payment for all purposes under section 409A. These commenters have also noted that a primary purpose of section 409A is to limit the ability of a service provider or service recipient to change the time at which deferred compensation is included in income after the time of payment is established and that the failure to treat income inclusion under section 457(f)(1)(A) as a payment would be inconsistent with this purpose. In response to these observations, these proposed regulations provide that the inclusion of an amount in income under section 457(f)(1)(A) is treated a payment for all purposes under section 409A.

Under this rule, if the plan provides for a deferral of compensation under section 409A: (1) Plan terms that specify the conditions to which the payment is subject and thus when a substantial risk of forfeiture lapses for purposes of section 457(f)(1)(A) (and, consequently, determine when an amount is includible in income) would be treated as plan terms providing for the payment of the amount includible in income, and (2) all rules under section 409A applicable to the payment of an amount would apply to the inclusion of an amount under section 457(f)(1)(A). A plan would not be a deferred compensation plan within the meaning of section 409A to the extent that the amounts payable under the plan are short-term deferrals under § 1.409A–1(b)(4). However, in certain limited circumstances, amounts includible in income under section 457(f)(1)(A) may not be short-term deferrals under § 1.409A–1(b)(4). For example, under the proposed section 457(f) regulations

(REG–147196–07), which are also published in the Proposed Rules section of this issue of the **Federal Register**, in certain circumstances conditioning a payment upon compliance with a noncompetition agreement will result in the payment being subject to a substantial risk of forfeiture for purposes of section 457(f)(1)(A), but that payment would not be treated as subject to a substantial risk of forfeiture for purposes of section 409A. In such cases, the amount payable at the end of the term of the noncompetition agreement upon compliance with the noncompete will be includible in income under section 457(f)(1)(A) only at the end of the term of the agreement under the section 457(f) regulations as proposed, but for purposes of section 409A will be deferred compensation (and not a short-term deferral), the payment of which is subject to the rules of section 409A.[2] See proposed § 1.457–12(e) (REG–147196–07); see also proposed § 1.457–12(a)(4) (REG–147196–07).

The Treasury Department and the IRS request comments on whether rules similar to those applicable to amounts included in income under section 457(f) should be adopted for amounts included in income under section 457A.

These proposed regulations also clarify that a transfer of property that is substantially nonvested (as defined under § 1.83–3(b)) to satisfy an obligation under a nonqualified deferred compensation plan is not a payment for purposes of section 409A unless the recipient makes an election under section 83(b) to include in income the fair market value of the property (disregarding lapse restrictions), less any amount paid for the property. These proposed regulations also make conforming clarifications to rules under § 1.409A–1(a)(4) regarding nonqualified deferred compensation plans subject to sections 457(f) and 457A, § 1.409A–1(b)(4) regarding the short-term deferral rule, and § 1.409A–2(b)(2) regarding the separate payment rule.

V. Permissible Payments

A. Death

The final regulations provide that an amount deferred under a nonqualified deferred compensation plan may be paid only at a specified time or upon an event set forth under the regulations. One of the permissible events upon which an amount may be paid is the service provider's death. The final regulations also provide that a payment is treated as made upon a date specified under the plan (including at the time a specified event occurs) if the payment is made on that date or on a later date within the same taxable year of the service provider or, if later, by the 15th day of the third calendar month following the date specified under the plan, provided that the service provider is not permitted, directly or indirectly, to designate the taxable year of the payment.

Some commenters have questioned whether these and other rules in the final regulations applicable to amounts payable upon the death of a service provider also apply in the case of the death of a beneficiary who has become entitled to the payment of an amount due to a service provider's death. These proposed regulations clarify that the rules applicable to amounts payable upon the death of a service provider also apply to amounts payable upon the death of a beneficiary.

Also, some commenters have indicated that the time periods for the payment of amounts following death often are not long enough to resolve certain issues related to the death (for example, confirming the death and completing probate). In view of the practical issues that often arise following a death, these proposed regulations provide that an amount payable following the death of a service provider, or following the death of a beneficiary who has become entitled to payment due to the service provider's death, that is to be paid at any time during the period beginning on the date of death and ending on December 31 of the first calendar year following the calendar year during which the death occurs is treated as timely paid if it is paid at any time during this period. A plan is not required to specify any particular date within this period as the payment date and may rely on this rule if the plan provides that an amount will be paid at some time during this period, including if the plan provides that payment will be made upon death without defining the period for payment following death in any other manner, and including if the plan provides that payment will be made on a date within this period determined in the discretion of the beneficiary. These proposed regulations further provide that a plan providing for the payment of an amount at any time during this specified period may be amended to provide for the payment of that amount (or the payment of that amount may be made without amending the plan) at any other time during this period (including a time determined in the discretion of a beneficiary) without failing to meet the requirements of the deferral election provisions of § 1.409A–2 or the permissible payment provisions of § 1.409A–3, including the prohibition on the acceleration of payments under § 1.409A–3(j). For example, a plan that provides for a payment to be made during the first calendar year beginning after the death of a service provider may be amended to provide for the payment of the amount (or the payment may be made under the plan without such amendment) at any time during the period beginning on the date of death and ending on December 31 of the first calendar year following the calendar year during which the death occurs. For additional rules concerning payments due upon a beneficiary's death, see section VI.A of this preamble.

B. Certain Transaction-Based Compensation

The final regulations provide special rules for payments of transaction-based compensation. Transaction-based compensation payments are payments related to certain types of changes in control that (1) occur because a service recipient purchases its stock held by a service provider or because the service recipient or a third party purchases a stock right held by a service provider, or (2) are calculated by reference to the value of service recipient stock. Under the final regulations, transaction-based compensation may be treated as paid at a designated date or pursuant to a payment schedule that complies with the requirements of section 409A(a) if it is paid on the same schedule and under the same terms and conditions as apply to payments to shareholders generally with respect to stock of the service recipient pursuant to the change in control. Likewise, transaction-based compensation meeting these requirements will not fail to meet the requirements of the initial or subsequent deferral election rules under section 409A if it is paid not later than five years after the change in control event. These proposed regulations clarify that the special payment rules for transaction-based compensation apply to a statutory stock option or a stock right that did not otherwise provide for deferred compensation before the purchase or agreement to purchase the stock right. Accordingly, the purchase (or agreement to purchase) such a statutory stock option or stock right in a manner consistent with these rules does not result in the statutory stock option or stock right being treated as having provided for the deferral of compensation from the original grant date.

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[2] There may also be instances in which a portion of an amount payable under an arrangement that is subject to section 457(f) is a short-term deferral for purposes of both section 409A and section 457(f)(1)(A), while another portion of the amount is a deferral of compensation for purposes of section 409A. For example, assume an arrangement subject to section 457(f) provides for payment of a specified dollar amount plus earnings upon separation from service, with vesting to occur when the service provider has completed three years of service. The specified dollar amount plus earnings to date is includible in income under section 457(f)(1)(A) when the service provider completes three years of service, and that amount will be a short-term deferral under section 409A if the service provider includes it in income at that time. The service provider's right to receive a payment of additional earnings accruing after the vesting date is a deferred compensation plan under section 409A.

VI. Prohibition on Acceleration of Payments

A. Payments to Beneficiaries Upon Death, Disability, or Unforeseeable Emergency

Under the final regulations, a prohibited acceleration of a payment does not result from the addition of death, disability, or unforeseeable emergency as a potentially earlier alternative payment event for an amount previously deferred. However, under the final regulations, this exception applies only with respect to a service provider's death, disability, or unforeseeable emergency and does not apply with respect to the death, disability, or unforeseeable emergency of a beneficiary who has become entitled to a payment due to the service provider's death. These proposed regulations provide that this exception also applies to the payment of deferred amounts upon the death, disability, or unforeseeable emergency of a beneficiary who has become entitled to payment due to a service provider's death. These proposed regulations also clarify that a schedule of payments (including payments treated as a single payment) that has already commenced prior to a service provider's or a beneficiary's death, disability, or unforeseeable emergency may be accelerated upon the death, disability, or unforeseeable emergency.

B. Compliance With Bona Fide Foreign Ethics Laws or Conflicts of Interest Laws

Under the final regulations, a plan may provide for acceleration of the time or schedule of a payment, or a payment may be made under a plan, to the extent reasonably necessary to avoid the violation of a Federal, state, local, or foreign ethics or conflicts of interest law. However, with respect to a foreign ethics or conflicts of interest law, this exception applies only to foreign earned income from sources within the foreign country that promulgated the law. Commenters have suggested that this provision should not be limited to foreign earned income because the requirements of foreign ethics or conflicts of interest laws may affect both the payment of foreign and United States earned income. These proposed regulations expand the scope of this provision to permit the acceleration of any nonqualified deferred compensation if the acceleration is reasonably necessary to comply with a *bona fide* foreign ethics or conflicts of interest law.

C. Plan Terminations and Liquidations

Under the final regulations, a plan may provide for the acceleration of a payment made pursuant to the termination and liquidation of a plan under certain circumstances. Specifically, a plan may provide for the acceleration of a payment if the plan is terminated and liquidated within 12 months of a corporate dissolution taxed under section 331, or with the approval of a bankruptcy court pursuant to 11 U.S.C. 503(b)(1)(A) if certain other conditions are satisfied. The citation to 11 U.S.C. 503(b)(1)(A) is erroneous. These proposed regulations correct this provision by retaining the operative rule but deleting the section reference.

The final regulations also provide that a payment may be accelerated pursuant to a change in control event as described under § 1.409A–3(j)(4)(ix)(B) or in other circumstances provided certain requirements are satisfied, as described under § 1.409A–3(j)(4)(ix)(C). To terminate a plan pursuant to § 1.409A–3(j)(4)(ix)(C), the final regulations provide that the service recipient must terminate and liquidate all plans sponsored by the service recipient that would be aggregated with the terminated plan under the plan aggregation rules under § 1.409A–1(c) of the final regulations if the same service provider had deferrals of compensation under all such plans. The final regulations also provide that for three years following the date on which the service recipient took all necessary action to irrevocably terminate and liquidate the plan the service recipient cannot adopt a new plan that would be aggregated with the terminated and liquidated plan if the same service provider participated in both plans. Some commenters have asked whether these rules mean that only the plans of a particular category in which a particular service provider actually participates must be terminated if a plan in which that service provider participates is terminated.

The plan aggregation rules under § 1.409A–1(c)(2) of the final regulations identify nine different types of nonqualified deferred compensation plans—account balance plans providing for elective deferrals, account balance plans that do not provide for elective deferrals, nonaccount balance plans, separation pay plans, plans providing for in-kind benefits or reimbursements, split-dollar plans, foreign earned income plans, stock right plans, and plans that are not any of the foregoing. All plans of the same type in which the same service provider participates are treated as a single plan. The rule set forth under § 1.409A–3(j)(4)(ix)(C) that requires the termination and liquidation of all plans sponsored by the service recipient that would be aggregated with the terminated plan "if the same service provider had deferrals of compensation" under all of those plans is intended to require the termination of all plans in the same plan category sponsored by the service recipient. The reference to the "same service provider" having deferrals of compensation under all of those plans refers to participation of a hypothetical service provider in all such plans, which would be required to aggregate all of the plans under the section 409A plan aggregation rules.

The Treasury Department and the IRS have concluded that the meaning of the plan termination rule under § 1.409A–3(j)(4)(ix)(C) is not ambiguous. However, to address the questions raised by commenters, these proposed regulations further clarify that the acceleration of a payment pursuant to this rule is permitted only if the service recipient terminates and liquidates all plans of the same category that the service recipient sponsors, and not merely all plans of the same category in which a particular service provider actually participates. These proposed regulations also clarify that under this rule, for a period of three years following the termination and liquidation of a plan, the service recipient cannot adopt a new plan of the same category as the terminated and liquidated plan, regardless of which service providers participate in the plan.

D. Offset Provisions

The final regulations provide that the payment of an amount as a substitute for a payment of deferred compensation is generally treated as a payment of the deferred compensation. They also provide that when the payment of an amount results in an actual or potential reduction of, or current or future offset to, an amount of deferred compensation, the payment is a substitute for the deferred compensation. Further, the final regulations provide that if a service provider's right to deferred compensation is made subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, or garnishment by the service provider's creditors, the deferred compensation is treated as having been paid. Under certain circumstances, these provisions may result in an amount being paid (or treated as paid) before the payment date or event specified in the plan in violation of the prohibition on the acceleration of payments under section 409A. The final regulations, however, include a de minimis exception to these rules pursuant to which a plan may provide for the acceleration of the time or schedule of a payment, or a payment may be made under a plan, in satisfaction of a debt of the service provider if the debt is incurred in the ordinary course of the service relationship, the entire offset in any taxable year does not exceed $5,000, and the offset is taken at the same time and in the same amount as the debt otherwise would have been due from the service provider.

Stakeholders have observed that the prohibition on offsets may conflict with certain laws regarding debt collection by the Federal government (for example, 31 U.S.C. 3711, *et. seq.*), and that the exception for small debts is insufficient to permit the enforcement of these laws. Because these laws would effectively prevent certain government entities from providing nonqualified deferred compensation in a manner that complies with the requirements of section 409A(a) and because of the limited applicability of Federal debt collection laws, the Treasury Department and the IRS have determined that it is appropriate to expand the current exception to the prohibition on accelerated payments for certain offsets to permit a plan to provide for the acceleration of the time or schedule of a payment, or to make a payment, to the extent reasonably necessary to comply with Federal laws regarding debt collection.

VII. Amount Includible in Income Under Section 409A

The proposed income inclusion regulations provide that the amount includible in income for a taxable year if a nonqualified deferred compensation plan fails to meet the requirements of section 409A(a) at any time during that taxable year equals the excess of (1) the total amount deferred under the plan for that taxable year, including any payments under the plan during that taxable year, over (2) the portion of that amount, if any, that is either subject to a substantial risk of forfeiture or has been previously included in income. The proposed income inclusion regulations, however, include an anti-abuse provision under § 1.409A–4(a)(1)(ii)(B), which provides that an amount otherwise subject to a substantial risk of forfeiture for purposes of determining the amount includible in income under a plan will be treated as not subject to a substantial risk of forfeiture for these purposes if the facts and circumstances indicate that a service recipient has a pattern or practice of permitting impermissible changes in the time or form of payment with respect to nonvested deferred amounts under one or more nonqualified deferred compensation plans and either (i) an impermissible change in the time or form of payment applies to the amount or (ii) the facts and circumstances indicate that the amount would be affected by the pattern or practice.

Although these rules permit the correction of certain plan provisions that fail to comply with the requirements of section 409A(a) while amounts are nonvested without including the amounts in income or incurring an additional tax, they were not intended to allow service recipients to change time or form of payment provisions that otherwise meet the requirements of section 409A(a) in a manner that fails to comply with section 409A(a), and they were not intended to permit service recipients to create errors in nonqualified deferred compensation plans with respect to nonvested amounts with the intention of using those errors as a pretext for establishing or changing a time or form of payment in a manner that fails to comply with section 409A(a). Accordingly, these proposed regulations clarify and modify the anti-abuse rule under § 1.409A–4(a)(1)(ii)(B) of the proposed income inclusion regulations to preclude changes of this nature.

First, these proposed regulations clarify that a deferred amount that is otherwise subject to a substantial risk of forfeiture is treated as not subject to a substantial risk of forfeiture for a service provider's taxable year during which there is a change in a plan provision (including an initial deferral election provision) that is not otherwise permitted under section 409A and the final regulations and that affects the time or form of payment of the amount if there is no reasonable, good faith basis for concluding that the original provision failed to meet the requirements of section 409A(a) and that the change is necessary to bring the plan into compliance with the requirements of section 409A(a).

Second, these proposed regulations provide examples of the types of facts and circumstances that indicate whether a service recipient has a pattern or practice of permitting impermissible changes in the time or form of payment with respect to nonvested deferred amounts under one or more plans. If the service recipient has such a pattern or practice that would affect a nonvested deferred amount, that amount is treated as not subject to a substantial risk of forfeiture. The facts and circumstances include: Whether a service recipient has taken commercially reasonable measures to identify and correct substantially similar failures promptly upon discovery; whether substantially similar failures have occurred with respect to nonvested deferred amounts to a greater extent than with respect to vested deferred amounts; whether substantially similar failures occur more frequently with respect to newly adopted plans; and whether substantially similar failures appear intentional, are numerous, or repeat common past failures that have since been corrected.

Third, these proposed regulations provide that, to the extent generally applicable guidance regarding the correction of section 409A failures prescribes a particular correction method (or methods) for a type of plan failure, that correction method (or one of the permissible correction methods) must be used if a service recipient chooses to correct that type of a failure with respect to a nonvested deferred amount. In addition, these proposed regulations provide that substantially similar failures affecting nonvested deferred amounts must be corrected in substantially the same manner.

A service recipient correcting a plan failure affecting a nonvested deferred amount is not required, solely with respect to the nonvested deferred amount, to comply with any requirement under generally applicable guidance regarding the correction of section 409A failures that is unrelated to the method for correcting the failure, such as general eligibility requirements, income inclusion, additional taxes, premium interest, or information reporting by the service recipient or service provider. Accordingly, a service recipient may amend a noncompliant plan term in a manner permitted under applicable correction guidance even though the failure may not have been eligible for correction under that guidance (for example, due to applicable timing requirements). In addition, the portion of the nonvested deferred amount that is affected by the correction is not subject to income inclusion, additional taxes, or applicable premium interest under section 409A(a)(1), and neither the service recipient nor the service provider is required to notify the IRS of the correction. For a description of the currently available corrections methods, see Notice 2008–113 (2008–51 IRB 1305), Notice 2010–6 (2010–3 IRB 275), and Notice 2010–80 (2010–51 IRB 853).

VIII. Individual and Entity Service Providers

Under the final regulations, the term service provider includes an individual, corporation, subchapter S corporation, partnership, personal service corporation, noncorporate entity that would be a personal service corporation if it were a corporation, qualified personal service corporation, and noncorporate entity that would be a qualified personal service corporation if it were a corporation. These proposed regulations clarify §§ 1.409A–1(b)(5)(vi)(A), 1.409A–1(b)(5)(vi)(E), 1.409A–1(b)(5)(vi)(F), and 1.409A–3(i)(5)(iii) of the final regulations to reflect that a service provider can be an entity as well as an individual. These proposed regulations also clarify § 1.409A–1(b)(3) of the final regulations to correct an erroneous reference to "service provider" that should be "service recipient."

Proposed Effective Dates

General Applicability Date for Amendments to Final Regulations

The provisions of these proposed regulations amending the final regulations are proposed to be applicable on or after the date on which they are published as final regulations in the **Federal Register**. For periods before this date, the existing final regulations and other applicable guidance apply (without regard to these proposed regulations). The applicability date for the existing final regulations in § 1.409A–6(b) is accordingly amended to reflect extension of certain transition relief through 2008 under Notice 2007–86, 2007–46 IRB 990. Taxpayers may, however, rely on these proposed regulations before they are published as final regulations, and until final regulations are published the IRS will not assert positions that are contrary to the positions set forth in these proposed regulations.

Certain provisions of these proposed amendments to the final regulations are not intended as substantive changes to the current requirements under section 409A. Accordingly, the Treasury Department and the IRS have concluded that the following positions may not properly be taken under the existing final regulations: (1) That the transfer of restricted stock for which no section 83(b) election is made or the transfer of a stock option that does not have a readily ascertainable fair market value would result in a payment under a plan; (2) that a contribution to a section 402(b) trust includible in income under section 402(b) to fund an obligation under a plan would not result in a payment under a plan; (3) that a stock purchase treated as a deemed asset sale under section 338 is a sale or other disposition of assets for purposes of determining when a service provider separates from service as a result of an asset purchase transaction; or (4) that the exception to the prohibition on acceleration of a payment upon a termination and liquidation of a plan pursuant to § 1.409A–3(j)(4)(ix)(C) applies if the service recipient terminates and liquidates only the plans of the same category in which a particular service provider participates, rather than all plans of the same category that the service recipient sponsors.

General Applicability Date for Amendments to Proposed Income Inclusion Regulations

The proposed income inclusion regulations are proposed to be applicable on or after the date on which they are published as final regulations in the **Federal Register**. Notice 2008–115 provides that, until the Treasury Department and the IRS issue further guidance, compliance with the provisions of the proposed income inclusion regulations with respect to the calculation of the amount includible in income under section 409A(a)(1) and the calculation of the additional taxes under section 409A(a)(1) will be treated as compliance with the requirements of section 409A(a), provided that the taxpayer complies with all of the provisions of the proposed regulations. Until the Treasury Department and the IRS issue further guidance, taxpayers may rely on the proposed income inclusion regulations, as modified by the amendment of § 1.409A–4(a)(1)(ii)(B) in these proposed regulations, for purposes of calculating the amount includible in income under section 409A(a)(1) (including the identification and treatment of deferred amounts subject to a substantial risk of forfeiture) and the calculation of the additional taxes under section 409A(a)(1), and the IRS will not assert positions with respect to periods before the date final regulations are published in the **Federal Register** that are contrary to the positions set forth in the proposed income inclusion regulations as amended by these proposed regulations.

Special Applicability Dates for Amendments to Recurring Part-Year Compensation Rules

The rules set forth in these proposed regulations regarding recurring part-year compensation are proposed to be applicable on and after the date on which these proposed regulations are published as final regulations in the **Federal Register**. However, taxpayers may rely on either the rules in these proposed regulations or the rules in Notice 2008–62 relating to recurring part-year compensation for the taxable year in which these proposed regulations are published as final regulations and all prior taxable years.

Effect on Other Documents

These proposed regulations do not affect the applicability of other guidance issued with respect to section 409A, including Notice 2008–115, except that, for the permitted reliance on the proposed income inclusion regulations, these proposed regulations withdraw § 1.409A–4(a)(1)(ii)(B) of the proposed income inclusion regulations and replace it with a new § 1.409A–4(a)(1)(ii)(B).

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at *http://www.irs.gov*. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations. It is hereby certified that the collection of information in these proposed regulations would not have a significant impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations only provide guidance on how to satisfy existing collection of information requirements. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the rules proposed by these proposed regulations. All comments will be available at *www.regulations.gov* or upon request. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Gregory Burns, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.409A–4(a)(1)(ii)(B) of the notice of proposed rulemaking (REG–148326–05) that was published in the **Federal Register** on December 8, 2008 (73 FR 74380) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.409A–0 is amended by:

■ 1. Revising the entry for § 1.409A–1 by adding paragraph (b)(13).

■ 2. Redesignating paragraph (q) as paragraph (r), and revising paragraph (q) in § 1.409A–1.

■ 3. Revising the entry to paragraph (d) in § 1.409A–3.

■ 4. Revising the entry to (j)(4)(xiii) in § 1.409A–3.

The revisions and addition read as follows:

§ 1.409A–0 Table of contents.

* * * * *

§ 1.409A–1 Definitions and covered plans.

* * * * *

(b) * * *

(13) Recurring part-year compensation.

* * * * *

(q) References to a payment being made.

(r) Application of definitions and rules.

* * * * *

§ 1.409A–3 Permissible Payments.

* * * * *

(d) * * *

(1) In general.

(2) Payments due following death.

* * * * *

(j) * * *

(4) * * *

(xiii) Certain offsets.

(A) De minimis offset.

(B) Compliance with Federal debt collection laws.

* * * * *

■ **Par. 3.** Section 1.409A–1 is amended by:

■ 1. Revising paragraph (a)(4).

■ 2. Revising the first sentence of paragraph (b)(1).

■ 3. Revising paragraphs (b)(3) and (b)(4)(i)(B).

■ 4. Revising paragraph (b)(4)(ii).

■ 5. Adding a last sentence to paragraph (b)(5)(iii)(A).

■ 6. Revising paragraph (b)(5)(iii)(E)(*1*).

■ 7. Revising the first sentence of paragraph (b)(5)(vi)(A).

■ 8. Revising paragraphs (b)(5)(vi)(E) and (b)(5)(vi)(F).

■ 9. Revising paragraph (b)(9)(iii)(A).

■ 10. Adding a last sentence to paragraph (b)(11).

■ 11. Adding paragraph (b)(13).

■ 12. Revising paragraphs (h)(4) and (h)(5).

■ 13. Redesignating paragraph (q) as paragraph (r) and revising paragraphs (q) and (r).

The revisions and additions read as follows:

§ 1.409A–1 Definitions and covered plans.

* * * * *

(a) * * *

(4) *Section 457(f) and section 457A plans.* A deferred compensation plan under section 457(f) or a nonqualified deferred compensation plan under section 457A may be a nonqualified deferred compensation plan for purposes of this paragraph (a). The rules of section 409A apply to nonqualified deferred compensation plans separately and in addition to any requirements applicable to such plans under section 457(f) or section 457A. In addition, nonelective deferred compensation of non-employees described in section 457(e)(12) and a grandfathered plan or arrangement described in § 1.457–2(k)(4) may be a nonqualified deferred compensation plan for purposes of this paragraph (a). The term *nonqualified deferred compensation plan* does not include a length of service award to a *bona fide* volunteer under section 457(e)(11)(A)(ii).

* * * * *

(b) * * *

(1) * * Except as otherwise provided in paragraphs (b)(3) through (b)(13) of this section, a plan provides for the deferral of compensation if, under the terms of the plan and the relevant facts and circumstances, the service provider has a legally binding right during a taxable year to compensation that, pursuant to the terms of the plan, is or may be payable to (or on behalf of) the service provider in a later taxable year. * * *

* * * * *

(3) *Compensation payable pursuant to the service recipient's customary payment timing arrangement.* A deferral of compensation does not occur solely because compensation is paid after the last day of the service provider's taxable year pursuant to the timing arrangement under which the service recipient normally compensates service providers for services performed during a payroll period described in section 3401(b), or with respect to a non-employee service provider, a period not longer than the payroll period described in section 3401(b) or if no such payroll period exists, a period not longer than the earlier of the normal timing arrangement under which the service recipient normally compensates non-employee service providers or 30 days after the end of the service provider's taxable year.

(4) * * *

(i) * * *

(B) A payment is treated as actually or constructively received for purposes of this paragraph (b)(4) if it is made in accordance with the rules in § 1.409A–1(q).

* * * * *

(ii) *Certain delayed payments.* A payment that otherwise qualifies as a short-term deferral under paragraph (b)(4)(i) of this section but is made after the applicable 2½ month period may continue to qualify as a short-term deferral if the taxpayer establishes that it was administratively impracticable for the service recipient to make the payment by the end of the applicable 2½ month period and, as of the date upon which the legally binding right to the compensation arose, such impracticability was unforeseeable, or the taxpayer establishes that making the payment by the end of the applicable 2½ month period would have jeopardized the ability of the service recipient to continue as a going concern, and provided further that the payment is made as soon as administratively practicable or as soon as the payment would no longer have such effect. For purposes of this paragraph (b)(4)(ii), an action or failure to act of the service provider or a person under the service provider's control, such as a failure to provide necessary information or documentation, is not an unforeseeable event. In addition, a payment that otherwise qualifies as a short-term deferral under paragraph (b)(4)(i) of this section but is made after the applicable 2½ month period may continue to qualify as a short-term deferral if the taxpayer establishes that the service recipient reasonably anticipated that the service recipient's deduction with respect to such payment otherwise would not be permitted by application of section 162(m), and, as of the date the legally binding right to the payment arose, a reasonable person would not have anticipated the application of section 162(m) at the time of the payment, and provided further that the payment is made as soon as reasonably practicable following the first date on which the service recipient anticipates or reasonably should anticipate that, if the payment were made on such date, the service recipient's deduction with respect to such payment would no longer be restricted due to the application of section 162(m). Further, a payment that otherwise qualifies as a short-term deferral under paragraph (b)(4)(i) of this section but is made after the applicable 2½ month period may continue to qualify as a short-term deferral if the taxpayer establishes that the service recipient reasonably anticipated that making the payment by the end of the applicable 2½ month period would have violated Federal securities laws or other applicable law, provided that the payment is made as soon as reasonably practicable following the first date on which the service recipient anticipates or reasonably should anticipate that making the payment would not cause such violation. The making of a payment that would cause inclusion in gross income or the application of any penalty provision or other provision of the Internal Revenue Code is not treated as a violation of applicable law. For additional rules applicable to certain transaction-based compensation, see § 1.409A–3(i)(5)(iv)(A).

* * * * *

(5) * * *

(iii) * * *

(A) * * * The stock price will not be treated as based on a measure other than the fair market value to the extent that the amount payable upon the service provider's involuntary separation from service for cause, or the occurrence of a condition within the service provider's control such as noncompliance with a noncompetition or nondisclosure agreement (whether or not the condition is specified at the time the stock right is granted), is based on a measure that results in a payment of less than fair market value.

* * * * *

(E) *Eligible issuer of service recipient stock*—(*1*) *In general.* The term *eligible issuer of service recipient stock* means the corporation or other entity for which the service provider provides direct services on the date of grant of the stock right or a corporation or other entity for which it is reasonably anticipated that the service provider will begin providing direct services within 12 months after the date of grant, and any corporation or other entity (a related corporation or other entity) in a chain of corporations or other entities in which each corporation or other entity has a controlling interest in another corporation or other entity in the chain, ending with the corporation or other entity that has a controlling interest in the corporation or other entity for which the service provider provides direct services on the date of grant of the stock right or the corporation or other entity for which it is reasonably anticipated that the service provider will begin providing direct services within 12 months after the date of grant. If it is reasonably anticipated that a service provider will begin providing services for a corporation or other entity within 12 months after the date of grant, that corporation or other entity (or a related corporation or other entity) will be an eligible issuer of service recipient stock only if the services in fact commence within 12 months after the date of grant and the stock otherwise is service recipient stock at the time the services begin or, if services do not commence within that 12 month period, the right is forfeited. For this purpose, the term *controlling interest* has the same meaning as provided in § 1.414(c)–2(b)(2)(i), substituting the language "at least 50 percent" for "at least 80 percent" each place it appears in § 1.414(c)–2(b)(2)(i). In addition, if the use of such stock with respect to the grant of a stock right to a service provider is based upon legitimate business criteria, the term *controlling interest* has the same meaning as provided in § 1.414(c)–2(b)(2)(i), substituting the language "at least 20 percent" for "at least 80 percent" each place it appears in § 1.414(c)–2(b)(2)(i). For purposes of determining ownership of an interest in an organization, the rules of §§ 1.414(c)–3 and 1.414(c)–4 apply. The determination of whether a grant is based on legitimate business criteria is based on the facts and circumstances, focusing primarily on whether there is a sufficient nexus between the service provider and the issuer of the stock right so that the grant serves a legitimate non-tax business purpose other than simply providing compensation to the service provider that is excluded from the requirements of section 409A. For example, when stock of a corporation that owns an interest in a joint venture involving an operating business is granted to service providers of the joint venture who are former service providers of such corporation, that use is generally based upon legitimate business criteria, and therefore could be service recipient stock with respect to such service providers if the corporation owns at least 20 percent of the joint venture and the other requirements of this paragraph (b)(5)(iii) are met. Similarly, the legitimate business criteria requirement generally would be met if the corporate venturer issued such a right to a service provider of the joint venture who it reasonably expected would become a service provider of the corporate venturer. However, if a service provider has no real nexus with a corporate venturer, such as generally happens when the corporate venturer is a passive investor in the service recipient joint venture, a stock right issued to the service provider on the investor corporation's stock generally would not be based upon legitimate business criteria. Similarly, if a corporation holds only a minority interest in an entity that in turn holds a minority interest in the entity for which the service provider performs services, such that the corporation holds only an insubstantial indirect interest in the entity receiving the services, legitimate business criteria generally would not exist for issuing a stock right on the corporation's stock to the service provider.

* * * * *

(vi) * * *

(A) * * * The term *option* means the right or privilege of a person to purchase stock from a corporation by virtue of an offer of the corporation continuing for a stated period of time, whether or not irrevocable, to sell such stock at a price determined under paragraph (b)(5)(vi)(D) of this section, such person being under no obligation to purchase.

* * * * *

(E) *Exercise.* The term *exercise,* when used in reference to an option, means the act of acceptance by the holder of the option of the offer to sell contained in the option. In general, the time of exercise is the time when there is a sale or a contract to sell between the corporation and the holder. A promise to pay the exercise price is not an exercise of the option unless the holder of the option is subject to personal liability on such promise. An agreement or undertaking by the service provider to make payments under a stock purchase plan is not the exercise of an option to the extent the payments made remain subject to the withdrawal by or refund to the service provider.

(F) *Transfer.* The term *transfer,* when used in reference to the transfer to a person of a share of stock pursuant to the exercise of an option, means the transfer of ownership of such share, or the transfer of substantially all the rights of ownership. Such transfer must, within a reasonable time, be evidenced on the books of the corporation. A transfer may occur even if a share of stock is subject to a substantial risk of forfeiture or is not otherwise transferable immediately after the date of exercise. A transfer does not fail to occur merely because, under the terms of the arrangement, the person may not dispose of the share for a specified period of time, or the share is subject to a right of first refusal or a right to acquire the share at the share's fair market value at the time of the sale.

* * * * *

(9) * * *

(iii) * * *

(A) The separation pay (other than amounts described in paragraphs (b)(9)(iv) and (v) of this section) does not exceed two times the lesser of—

(*1*) The service provider's annualized compensation based upon the annual rate of pay for services provided to the service recipient for the service provider's taxable year preceding the taxable year in which the service provider has a separation from service with such service recipient (or for the taxable year in which the service provider has a separation from service if the service provider had no compensation from the service recipient in the preceding taxable year), adjusted for any increase during that year that was expected to continue indefinitely if the service provider had not separated from service; or

(*2*) The maximum amount that may be taken into account under a qualified retirement plan pursuant to section 401(a)(17) for the calendar year in which the service provider has a separation from service.

* * * * *

(11) * * * In addition, a plan does not provide for a deferral of compensation for purposes of this paragraph (b) to the extent it provides for a payment of reasonable attorneys' fees or other reasonable expenses incurred by the service provider to enforce any *bona fide* legal claim against the service recipient with respect to the service relationship between the service provider and the service recipient.

* * * * *

(13) *Recurring part-year compensation.* A plan in which a service provider participates that provides for the payment of recurring part-year compensation (as defined in § 1.409A–2(a)(14)), whether or not at the service provider's election, does not provide for a deferral of compensation for purposes of this paragraph (b) if the plan does not defer payment of any of the recurring part-year compensation to a date beyond the last day of the 13th month following the first day of the service period for which the recurring part-year compensation is paid, and the amount of the service provider's recurring part-year compensation does not exceed the annual compensation limit under section 401(a)(17) for the calendar year in which the service period commences.

* * * * *

(h) * * *

(4) *Asset purchase transactions.* If as part of a sale or other disposition of assets by one service recipient (seller) to an unrelated service recipient (buyer), a service provider of the seller would otherwise experience a separation from service with the seller, the seller and the buyer may retain the discretion to specify, and may specify, whether a service provider providing services to the seller immediately before the asset purchase transaction and providing services to the buyer after and as a result of the asset purchase transaction has experienced a separation from service for purposes of this paragraph (h), provided that the asset purchase transaction results from *bona fide,* arm's length negotiations, all service providers providing services to the seller immediately before the asset purchase transaction and providing services to the buyer after and as a result of the asset purchase transaction are treated consistently (regardless of position at the seller) for purposes of applying the provisions of any nonqualified deferred compensation plan, and such treatment is specified in writing no later than the closing date of the asset purchase transaction. For purposes of this paragraph (h)(4), references to a sale or other disposition of assets, or an asset purchase transaction, refer only to a transfer of substantial assets, such as a plant or division or substantially all of the assets of a trade or business, and do not refer to a stock purchase treated as a deemed asset sale under section 338. For purposes of this paragraph (h)(4), whether a service recipient is related to another service recipient is determined under the rules provided in paragraph (f)(2)(ii) of this section.

(5) *Dual status.* If a service provider provides services both as an employee of a service recipient and as an independent contractor of the service recipient, the service provider must separate from service both as an employee and as an independent contractor to be treated as having separated from service. Notwithstanding the foregoing, if a service provider provides services both as an employee of a service recipient and as a member of the board of directors of a corporate service recipient (or an analogous position with respect to a non-corporate service recipient), the services provided as a director are not taken into account in determining whether the service provider has a separation from service as an employee for purposes of a nonqualified deferred compensation plan in which the service provider participates as an employee that is not aggregated with any plan in which the service provider participates as a director under paragraph (c)(2)(ii) of this section. In addition, if a service provider provides services both as an employee of a service recipient and as a member of the board of directors of a corporate service recipient (or an analogous position with respect to a non-corporate service recipient), the services provided as an employee are not taken into account in determining whether the service provider has a separation from service as a director for purposes of a nonqualified deferred compensation plan in which the service provider participates as a director that is not aggregated with any plan in which the service provider participates as an

employee under paragraph (c)(2)(ii) of this section.

* * * * *

(q) *References to a payment being made.* A payment is made or an amount is paid or received when any taxable benefit is actually or constructively received, which includes a transfer of cash, a transfer of property includible in income under section 83, any other event that results in the inclusion in income under the economic benefit doctrine, a contribution to a trust described in section 402(b) at the time includible in income under section 402(b), a transfer or creation of a beneficial interest in a section 402(b) trust at the time includible in income under section 402(b), and the inclusion of an amount in income under 457(f)(1)(A). In addition, a payment is made or an amount is paid or received upon the transfer, cancellation, or reduction of an amount of deferred compensation in exchange for benefits under a welfare benefit plan, a fringe benefit excludible under section 119 or section 132, or any other benefit that is excludible from gross income. Notwithstanding the foregoing, the occurrence of any of the following events is not a payment:

(1) a grant of an option that does not have a readily ascertainable fair market value (as defined under § 1.83–7(b));

(2) a transfer of property (including an option that has a readily ascertainable fair market value) that is substantially nonvested (as defined under § 1.83–3(b)) with respect to which the service provider does not make a valid election under section 83(b); or

(3) a contribution to a trust described in section 402(b) or a transfer or creation of a beneficial interest in a section 402(b) trust unless and until the amount is includible in income under section 402(b).

(r) *Application of definitions and rules.* The definitions and rules set forth in paragraphs (a) through (q) of this section apply for purposes of section 409A, this section, and §§ 1.409A–2 through 1.409A–6.

■ **Par. 4.** Section 1.409A–2 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 1.409A–2 Deferral elections.

* * * * *

(b) * * *

(2) *Definitions of payments for purposes of subsequent changes in the time or form of payment*—(i) *In general.* Except as provided in paragraphs (b)(2)(ii) and (iii) of this section, the term *payment* refers to each separately identified amount to which a service provider is entitled to payment under a plan on a determinable date, and includes amounts applied for the benefit of the service provider. An amount is separately identified only if the amount may be objectively determined under a nondiscretionary formula. For example, an amount identified as 10 percent of the account balance as of a specified payment date would be a separately identified amount. The determination of whether a payment is or has been made for purposes of this paragraph (b) is made in accordance with the rules in § 1.409A–1(q). For additional rules relating to the application of this paragraph (b) to amounts payable at a fixed time or pursuant to a fixed schedule, see § 1.409A–3(i)(1).

* * * * *

■ **Par. 5.** Section 1.409A–3 is amended by:

■ 1. Revising paragraph (b).

■ 2. Redesignating paragraph (d) as paragraph (d)(1) and revising the heading of paragraph (d)(1).

■ 3. Adding paragraph (d)(2).

■ 4. Revising paragraphs (i)(5)(iii) and (i)(5)(iv)(A).

■ 5. Revising paragraphs (j)(1) and (j)(2).

■ 6. Revising paragraph (j)(4)(iii)(B).

■ 7. Revising paragraphs (j)(4)(ix)(A) and (j)(4)(ix)(C).

■ 8. Revising paragraph (j)(4)(xiii).

The revisions and additions read as follows:

§ 1.409A–3 Permissible payments.

* * * * *

(b) *Designation of payment upon a permissible payment event.* Except as otherwise specified in this section, a plan provides for the payment upon an event described in paragraph (a)(1), (2), (3), (5), or (6) of this section if the plan provides the date of the event is the payment date, or specifies another payment date that is objectively determinable and nondiscretionary at the time the event occurs. A plan may also provide that a payment upon an event described in paragraph (a)(1), (2), (3), (5), or (6) of this section is to be made in accordance with a schedule that is objectively determinable and nondiscretionary based on the date the event occurs and that would qualify as a fixed schedule under paragraph (i)(1) of this section if the payment event were instead a fixed date, provided that the schedule must be fixed at the time the permissible payment event is designated. In addition, a plan may provide that a payment, including a payment that is part of a schedule, is to be made during a designated taxable year of the service provider that is objectively determinable and nondiscretionary at the time the payment event occurs such as, for example, a schedule of three substantially equal payments payable during the first three taxable years following the taxable year in which a separation from service occurs. A plan may also provide that a payment, including a payment that is part of a schedule, is to be made during a designated period objectively determinable and nondiscretionary at the time the payment event occurs, but only if the designated period both begins and ends within one taxable year of the service provider or the designated period is not more than 90 days and the service provider does not have a right to designate the taxable year of the payment (other than an election that complies with the subsequent deferral election rules of § 1.409A–2(b)). However, in the case of a payment to be made following the death of the service provider or a beneficiary who has become entitled to payment due to the service provider's death, in addition to the permitted designated periods described in the previous sentence, the designated period may begin on the date of death and end on December 31 of the first calendar year following the calendar year during which the death occurs, and the payment recipient may have the right to designate the taxable year of payment. If a plan provides for a period of more than one day following a payment event during which a payment may be made, such as permitting payment within 90 days following the date of the event, the payment date for purposes of the subsequent deferral rules under § 1.409A–2(b) is treated as the first possible date upon which a payment could be made under the terms of the plan. A plan may provide for payment upon the earliest or latest of more than one event or time, provided that each event or time is described in paragraphs (a)(1) through (6) of this section. For examples illustrating the provisions of this paragraph, see paragraph (i)(1)(vi) of this section.

* * * * *

(d) *When a payment is treated as made upon the designated payment date*—(1) *In general.* * * *

(2) *Payments due following death.* A payment specified to be made under the plan on any date within the period beginning on the date of the death of the service provider, or of a beneficiary who has become entitled to payment due to the service provider's death, and ending on December 31 of the first calendar year following the calendar year during which the death occurs (including a payment specified to be made upon death) is treated as made on the date

specified under the plan if the payment is made on any date during this period, regardless of whether the payment recipient designates the taxable year of payment. Further, any change to the time or form of a payment that is specified to be made under the plan during this period to provide that the payment will be made on any other date during this period will not be treated as a subsequent deferral election for purposes of § 1.409A–2(b)(1) or an impermissible acceleration for purposes of § 1.409A–3(j)(1).

* * * * *

(i) * * *

(5) * * *

(iii) *Attribution of stock ownership.* For purposes of paragraph (i)(5) of this section, section 318(a) applies to determine stock ownership. Stock underlying a vested option is considered owned by the person who holds the vested option (and the stock underlying a nonvested option is not considered owned by the person who holds the nonvested option). For purposes of the preceding sentence, however, if a vested option is exercisable for stock that is not substantially vested (as defined by § 1.83–3(b) and (j)), the stock underlying the option is not treated as owned by the person who holds the option.

* * * * *

(iv) *Special rules for certain delayed payments pursuant to a change in control event*—(A) *Certain transaction-based compensation.* Payments of compensation related to a change in control event described in paragraph (i)(5)(v) of this section (change in the ownership of a corporation) or paragraph (i)(5)(vii) of this section (change in the ownership of a substantial portion of a corporation's assets) that occur because a service recipient purchases its stock held by the service provider or because the service recipient or a third party purchases a stock right or a statutory stock option described in § 1.409A–(1)(b)(5)(ii) held by a service provider, or that are calculated by reference to the value of stock of the service recipient (collectively, transaction-based compensation), may be treated as paid on a designated date or pursuant to a payment schedule that complies with the requirements of section 409A if the transaction-based compensation is paid on the same schedule and under the same terms and conditions as apply to payments to shareholders generally with respect to stock of the service recipient pursuant to a change in control event described in paragraph (i)(5)(v) of this section (change in the ownership of a corporation) or as apply to payments to the service recipient pursuant to a change in control event described in paragraph (i)(5)(vii) of this section (change in the ownership of a substantial portion of a corporation's assets). In addition, to the extent that the transaction-based compensation is paid not later than five years after the change in control event, the payment of such compensation will not violate the initial or subsequent deferral election rules set out in § 1.409A–2(a) and (b) solely as a result of such transaction-based compensation being paid pursuant to such schedule and terms and conditions. The payment or agreement to pay transaction-based compensation payable with respect to a stock right described in § 1.409A–(1)(b)(5)(i)(A) or (B) or a statutory stock option described in § 1.409A–(1)(b)(5)(ii) also will not cause the stock right or statutory stock option to be treated as having provided for the deferral of compensation from the original grant date solely as a result of the transaction-based compensation being paid on the same schedule and under the same terms and conditions as apply to payments to shareholders generally with respect to stock of the service recipient pursuant to the change in control event described in paragraph (i)(5)(v) of this section (change in the ownership of a corporation) or as apply to payments to the service recipient pursuant to the change in control event described in paragraph (i)(5)(vii) of this section (change in the ownership of a substantial portion of a corporation's assets) and the transaction-based compensation is paid not later than five years after the change in control event. If before and in connection with a change in control event described in paragraph (i)(5)(v) or (i)(5)(vii) of this section, transaction-based compensation that would otherwise be payable as a result of such event is made subject to a condition on payment that is a substantial risk of forfeiture (as defined in § 1.409A–1(d), without regard to the provisions of that section under which additions or extensions of forfeiture conditions are disregarded) and the transaction-based compensation is payable under the same terms and conditions as apply to payments made to shareholders generally with respect to stock of the service recipient pursuant to a change in control event described in paragraph (i)(5)(v) of this section or to payments to the service recipient pursuant to a change in control event described in paragraph (i)(5)(vii) of this section, for purposes of determining whether such transaction-based compensation is a short-term deferral the requirements of § 1.409A–1(b)(4) are applied as if the legally binding right to such transaction-based compensation arose on the date that it became subject to such substantial risk of forfeiture.

* * * * *

(j) *Prohibition on acceleration of payments*—(1) *In general*—Except as provided in paragraph (j)(4) of this section, a nonqualified deferred compensation plan may not permit the acceleration of the time or schedule of any payment or amount scheduled to be paid pursuant to the terms of the plan, and no such accelerated payment may be made whether or not provided for under the terms of such plan. For purposes of determining whether a payment of deferred compensation has been made, the rules of paragraph (f) of this section (on substituted payments) apply. For purposes of this paragraph (j), an impermissible acceleration does not occur if payment is made in accordance with plan provisions or an election as to the time and form of payment in effect at the time of initial deferral (or added in accordance with the rules applicable to subsequent deferral elections under § 1.409A–2(b)) pursuant to which payment is required to be made on an accelerated schedule as a result of an intervening payment event that is an event described in paragraph (a)(1), (2), (3), (5) or (6) of this section. For such purpose, the intervening payment event may apply with respect to either the service provider or, following the service provider's death, a beneficiary who becomes entitled to payment due to the service provider's death (substituting such beneficiary for the service provider in the definitions of *disability* in paragraph (i)(4) of this section and *unforeseeable emergency* in paragraph (i)(3) of this section, as applicable). For example, a plan may provide that a participant will receive six installment payments commencing at separation from service, and also provide that if the participant dies after such payments commence but before all payments have been made, all remaining amounts will be paid in a lump sum payment. Additionally, it is not an acceleration of the time or schedule of payment of a deferral of compensation if a service recipient waives or accelerates the satisfaction of a condition constituting a substantial risk of forfeiture applicable to such deferral of compensation, provided that the requirements of section 409A (including the requirement that the payment be made upon a permissible payment event) are otherwise satisfied with respect to such deferral of compensation. For example, if a nonqualified deferred compensation plan provides for a lump sum payment of the vested benefit upon separation from service, and the benefit vests under the plan only after 10 years of service, it is not a violation of the requirements of section 409A if the service recipient reduces the vesting requirement to five years of service, even if a service provider becomes vested as a result and receives a payment in connection with a separation from service before the service provider would have completed 10 years of service. However, if the plan in this example had provided for a payment on a fixed date, rather than at separation from service, the date of payment could not be accelerated due to the accelerated vesting. For the definition of a payment for purposes of this paragraph (j), see § 1.409A–2(b)(5) (coordination of the subsequent deferral election rules with the prohibition on acceleration of payments). For other permissible payments, see § 1.409A–2(b)(2)(iii) (certain immediate payments of remaining installments) and paragraph (d) of this section (certain payments made no more than 30 days before the designated payment date).

(2) *Application to multiple payment events.* The addition of a permissible payment event, the deletion of a permissible payment event, or the substitution of one permissible payment event for another permissible payment event, results in an acceleration of a payment if the addition, deletion, or substitution could result in the payment being made on an earlier date than such payment would have been made absent such addition, deletion, or substitution. Notwithstanding the previous sentence, the addition of death, disability (as defined in paragraph (i)(4) of this section), or an unforeseeable emergency (as defined in paragraph (i)(3) of this section), as a potentially earlier alternative or intervening payment event to an amount previously deferred will not be treated as resulting in an acceleration of a payment, even if such addition results in the payment being paid at an earlier time than such payment would have been made absent the addition of the payment event. For such purpose, the earlier alternative or intervening payment event may apply with respect to either the service provider or, following the service provider's death, a beneficiary who becomes entitled to payment due to the service provider's death (substituting such beneficiary for the service provider in the definitions of *disability* in paragraph (i)(4) of this section and *unforeseeable emergency* in paragraph (i)(3) of this section, as applicable). However, the addition of such a payment event as a potentially later alternative payment event generally is subject to the rules governing changes in the time and form of payment (see § 1.409A–2(b)).

* * * * *

(4) * * *

(iii) * * *

(B) *Compliance with ethics laws or conflicts of interest laws.* A plan may provide for acceleration of the time or schedule of a payment under the plan, or a payment may be made under a plan, to the extent reasonably necessary to avoid the violation of an applicable Federal, state, local, or *bona fide* foreign ethics law or conflicts of interest law (including under circumstances in which such payment is reasonably necessary to permit the service provider to participate in activities in the normal course of his or her position in which the service provider would otherwise not be able to participate under an applicable rule). A payment is reasonably necessary to avoid the violation of a Federal, state, local, or *bona fide* foreign ethics law or conflicts of interest law if the payment is a necessary part of a course of action that results in compliance with a Federal, state, local, or *bona fide* foreign ethics law or conflicts of interest law that would be violated absent such course of action, regardless of whether other actions would also result in compliance with the Federal, state, local, or *bona fide* foreign ethics law or conflicts of interest law.

* * * * *

(ix) * * *

(A) The service recipient's termination and liquidation of the plan within 12 months of a corporate dissolution taxed under section 331, or with the approval of a U.S. bankruptcy court, provided that the amounts deferred under the plan are included in the participants' gross incomes in the latest of the following years (or, if earlier, the taxable year in which the amount is actually or constructively received).

(*1*) The calendar year in which the plan termination and liquidation occurs;

(*2*) The first calendar year in which the amount is no longer subject to a substantial risk of forfeiture; or

(*3*) The first calendar year in which the payment is administratively practicable.

* * * * *

(C) The service recipient's termination and liquidation of the plan, provided that—

(*1*) The termination and liquidation does not occur proximate to a downturn in the financial health of the service recipient;

(*2*) The service recipient terminates and liquidates all agreements, methods, programs, and other arrangements sponsored by the service recipient that would be aggregated with any terminated and liquidated agreements, methods, programs, and other arrangements under § 1.409A–1(c) as if there were one service provider that had deferrals of compensation under every such agreement, method, program, and other arrangement sponsored by the service recipient (for example, all elective account balance plans that the service recipient sponsors);

(*3*) No payments in liquidation of the plan are made within 12 months of the date the service recipient takes all necessary action to irrevocably terminate and liquidate the plan other than payments that would be payable under the terms of the plan if the action to terminate and liquidate the plan had not occurred;

(*4*) All payments are made within 24 months of the date the service recipient takes all necessary action to irrevocably terminate and liquidate the plan; and

(*5*) The service recipient does not adopt any new agreement, method, program, or other arrangement described in paragraph (C)(2) of this subsection, at any time within three years following the date the service recipient takes all necessary action to irrevocably terminate and liquidate the plan.

* * * * *

(xiii) *Certain offsets*—(A) *De minimis offset.* A plan may provide for the acceleration of the time or schedule of a payment, or a payment may be made under such plan, as satisfaction of a debt of the service provider to the service recipient, if such debt is incurred in the ordinary course of the service relationship between the service recipient and the service provider, the entire amount of reduction in any of the service recipient's taxable years does not exceed $5,000, and the reduction is made at the same time and in the same amount as the debt otherwise would have been due and collected from the service provider.

(B) *Compliance with Federal debt collection laws.* A plan may provide for the acceleration of the time or schedule of a payment, or a payment may be made under such plan, as satisfaction of a debt of the service provider to the service recipient, to the extent reasonably necessary to comply with 31 U.S.C. 3711 et. seq. or similar Federal nontax law regarding debt collection relating to claims of the Federal government. A payment is reasonably necessary to comply with such a Federal debt collection law if the payment is a necessary part of a course of action that results in compliance with the Federal debt collection law that would be violated absent such course of action, regardless of whether other actions would also result in compliance with the Federal debt collection law.

* * * * *

■ **Par. 6.** Section 1.409A–4 (REG–148326–05), as proposed at 73 FR 74380 (December 8, 2008), is proposed to be amended by revising paragraph (a)(1)(ii)(B) to read as follows:

§ 1.409A–4 Calculation of amount includible in income and additional income taxes.

* * * * *

(B) *Treatment of certain deferred amounts otherwise subject to a substantial risk of forfeiture*—(1) *Risk of forfeiture disregarded.* For purposes of determining the amount includible in income under section 409A(a)(1) and paragraph (a)(1)(i) of this section, an amount deferred under a plan that is otherwise subject to a substantial risk of forfeiture for a taxable year is treated as not subject to a substantial risk of forfeiture for the taxable year, if during the taxable year any of the following occur:

(i) A change (including an initial deferral election) that is not authorized under § 1.409A–1, § 1.409A–2, or § 1.409A–3 is made to a provision of the plan providing for the time or form of payment of the deferred amount, if the service recipient has not made a reasonable, good faith determination that, absent the change, the provision fails to comply with the requirements of section 409A(a).

(ii) The service recipient has engaged in a pattern or practice of permitting substantially similar failures to comply with section 409A(a) under one or more nonqualified deferred compensation plans while amounts deferred under the plans are nonvested, and the facts and circumstances indicate that the deferred amount would be affected by the pattern or practice. Whether such a pattern or practice exists will depend on the facts and circumstances, including, but not limited to, whether the service recipient has taken commercially reasonable measures to identify and correct the substantially similar failures promptly upon discovery, whether the failures have affected nonvested deferred amounts with greater frequency than vested deferred amounts, whether the failures have occurred more frequently under newly adopted plans, and whether the failures appear intentional, are numerous, or repeat one or more similar past failures that were previously identified and corrected.

(iii) The correction of a failure to comply with section 409A(a) affecting the deferred amount is not consistent with an applicable correction method (if one exists) set forth in applicable guidance issued by the Treasury Department and the IRS for correcting failures under section 409A(a), or the failure is not corrected in substantially the same manner as a substantially similar failure affecting a nonvested deferred amount under another plan sponsored by the service recipient. Solely with respect to the deferred amount, the requirements under applicable correction guidance with respect to eligibility, income inclusion, additional taxes, premium interest, and information reporting by the service recipient or service provider do not apply.

■ **Par. 7.** Section 1.409A–6 is amended by revising paragraph (b) to read as follows:

§ 1.409A–6 Application of section 409A and effective dates.

* * * * *

(b) *Regulatory applicability date.* Section 1.409A–0, § 1.409A–1, § 1.409A–2, § 1.409A–3 and this section, as amended, apply for taxable years beginning on or after publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.** Section 1.409A–0, § 1.409A–1, § 1.409A–2, § 1.409A–3 and this section as they appeared in the April 2009 edition of 26 CFR part 1 apply for taxable years beginning on or after January 1, 2009 and before publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.**

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–14331 Filed 6–21–16; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4 and 24

[Docket No. TTB–2016–0005; Notice No. 160]

RIN 1513–AC27

Proposed Revisions to Wine Labeling and Recordkeeping Requirements

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its labeling and recordkeeping regulations in 27 CFR part 24 to provide that any standard grape wine containing 7 percent or more alcohol by volume that is covered by a certificate of exemption from label approval may not be labeled with a varietal (grape type) designation, a type designation of varietal significance, a vintage date, or an appellation of origin unless the wine is labeled in compliance with the standards set forth in the appropriate sections of 27 CFR part 4 for that label information. TTB is also proposing to amend its part 4 wine labeling regulations to include a reference to the new part 24 requirement.

DATES: TTB must receive written comments on or before August 22, 2016.

ADDRESSES: Please send your comments on this document to one of the following addresses:

- *Internet: http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2016–0005 at "*Regulations.gov,*" the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this document and any comments TTB receives about this proposal at *http://www.regulations.gov* within Docket No. TTB–2016–0005. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 160. You also may view copies of this proposed rule and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 275.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Chapter 51 of the Internal Revenue Code of 1986, as amended (IRC), 26 U.S.C. chapter 51, sets forth excise tax collection and related provisions pertaining to, among other things, the production of wine. Subchapter F of chapter 51 sets forth provisions specific to bonded and taxpaid wine premises. Under 26 U.S.C. 5388(a), standard wines may be removed from bonded and taxpaid wine premises subject to the provisions of subchapter F and be marked, transported, and sold under their proper designation as to kind and origin, or, if there is no such designation known to the trade or consumers, then under a truthful and adequate statement of composition. Pursuant to section 5367 of the IRC (26 U.S.C. 5367), a proprietor of a bonded wine cellar or a taxpaid wine bottling house shall keep such records and file such returns, in the form and containing such information, as the Secretary of the Treasury may by regulations provide.

A proprietor of a bonded wine cellar (including a bonded winery) or a taxpaid wine bottling house will be referred to in this document as a "wine proprietor."

In addition to the IRC marking and recordkeeping requirements, wines containing at least 7 percent alcohol by volume are subject to the labeling requirements of the Federal Alcohol Administration Act (FAA Act). Section 105(e) of the FAA Act, codified at 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product.

The FAA Act also generally requires a producer, blender, or wholesaler of wine, or proprietor of a bonded wine storeroom, to obtain a certificate of label approval prior to bottling wine for sale in interstate commerce. Bottlers are exempt from the labeling requirements of the FAA Act if they show to the satisfaction of the Secretary that the wine will not be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in, interstate or foreign commerce. It should be noted that certificates of exemption from label approval are not available to importers who are removing wine in containers from customs custody for consumption. If those removals are for sale or any other commercial purpose, the importer must first obtain a certificate of label approval.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers chapter 51 of the IRC and the provisions of the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (dated December 10, 2013, superseding Treasury Order 120–01 (Revised), "Alcohol and Tobacco Tax and Trade Bureau," dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

Current Regulatory Requirements

The TTB regulations implementing the provisions of chapter 51 of the IRC pertaining to the establishment and operation of wine premises are contained in 27 CFR part 24. The labeling requirements applicable to wine containers are found in 27 CFR 24.257. This section provides that proprietors must label each bottle or other container of wine prior to removal for consumption or sale. Certain mandatory information must appear on the label, including the name and address of the wine premises where bottled or packed; the brand name; the alcohol content; the kind of wine; and the net contents of the container.

The labeling requirements of part 24 apply to wines that are subject to the requirement for a certificate of label approval as well as wines that are covered by a certificate of exemption from label approval. Furthermore, some wines removed from wine premises may have less than 7 percent alcohol by volume, so they do not conform to the definition of "wine" under the FAA Act. See 27 U.S.C. 211(a)(6). These wines would not need a certificate of label approval or a certificate of exemption from label approval. Accordingly, the regulations in 27 CFR 24.257(a)(4), relating to the requirement that the wine be labeled with the kind of wine, provide different rules with regard to wines subject to label approval, wines that are exempt from the label approval requirement, and wines containing less than 7 percent alcohol by volume.

Provisions regarding the records that a proprietor must maintain to substantiate label information are contained in 27 CFR 24.314. Section 24.314 provides that a proprietor who removes bottled or packed wine with information stated on the label (such as a grape varietal designation, vintage date, or an appellation of origin) shall have complete records so that the information appearing on the label may be verified by a TTB audit. Additionally, a wine is not entitled to have information stated on the label unless the information can be readily verified by a complete and accurate record trail from the beginning source material to the removal of the wine for consumption or sale. These regulations apply to all wine labels, not just wines covered by a certificate of label approval.

Neither the labeling nor the recordkeeping regulations in part 24 prescribe the conditions under which a wine proprietor may use grape variety names as a type designation or reference vintage dates or appellations of origin on labels of wine.

The TTB regulations implementing the wine labeling provisions of the FAA Act are contained in 27 CFR part 4. Part 4 includes provisions that govern the use of one or more grape variety names as a type designation, the use of type designations of varietal significance, the use of vintage dates, and the use of appellations of origin on wine labels. An American appellation of origin may be the United States, a State, two or no more than three States which are all contiguous, a county, two or no more than three counties in the same State, or an American viticultural area (AVA). Under 27 CFR 4.50(b), any bottler or packer of wine shall be exempt from the requirements of part 4 if upon application the bottler or packer shows to the satisfaction of the appropriate TTB officer that the wine to be bottled or packed is not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce. If TTB is satisfied that the wine will not be introduced into interstate commerce, it will issue a certificate of exemption from label approval to the bottler or packer.

Concerns Regarding Label Information on Wines Covered by Certificates of Exemption From Label Approval

Some wine industry members have contacted TTB with their concerns regarding the accuracy of label information on certain wines covered by certificates of exemption from label approval. Specifically, the wines in question are standard wines labeled with AVA names, but the wines do not appear to meet the part 4 requirements for using an AVA name. In addition, TTB also received a letter signed by members of the California, Washington, Oregon, and New York Congressional delegations expressing similar concerns and urging TTB to use its authority to enforce the standards set out in the FAA Act regulations for all wines bearing an AVA appellation, regardless of where they are sold.

With regard to AVAs, under 27 CFR 4.25(e)(3)(iv), in order for a wine to be labeled with an AVA name: (1) The AVA name must have been approved under 27 CFR part 9; (2) not less than 85 percent of the wine must be derived from grapes grown within the boundaries of the viticultural area; and (3) the wine must have been fully finished within the State, or one of the States, within which the labeled viticultural area is located (except for cellar treatments permitted by 27 CFR 4.22(c) or blending which does not result in an alteration of class and type under 27 CFR 4.22(b)). Thus, a wine labeled with the AVA name "Napa Valley" must have been fully finished in California, in addition to complying with other requirements, in order to qualify to use the name "Napa Valley" as an appellation of origin on the label.

Accordingly, a wine labeled with the appellation "Napa Valley" but also labeled with a statement that indicates that the wine is produced outside of California, such as "Produced and bottled by ABC Winery, Anytown, Illinois," would not meet the provisions of § 4.25(e)(3)(iv) since the wine was not fully finished in California. As a result, it would not qualify for a certificate of label approval. However, if the wine will be sold only within the State of Illinois, and the bottler certifies that it will not introduce the bottled product into interstate commerce, then, in accordance with 27 U.S.C. 205(e), the wine is eligible for a certificate of exemption from label approval, which would exempt it from the provisions of part 4.

The letter from the members of Congress who contacted TTB on this issue expressed concern that the use of AVA names on wines that are covered by certificates of exemption and that do not comply with the AVA provisions contained in § 4.25(e)(3)(iv) undermines the best interests of the consumer and the decades-old system of American viticultural areas, is contrary to the purposes of the FAA Act, and should not be permitted under the IRC labeling regulations in 27 CFR part 24. The industry members asked whether § 24.314, which requires proprietors to maintain complete records verifying label information (including information that substantiates appellation of origin claims such as AVAs), provides TTB with the authority to enforce the part 4 standards for AVAs on wines covered by certificates of exemption. However, it is TTB's position that there currently are no provisions in part 24, including § 24.314, that require wine proprietors to comply with part 4 standards for labeling when the wine is covered by a certificate of exemption. In reviewing this regulation, TTB also realized that the regulation does not clearly set forth the standards to which wines will be held when evaluating whether labeling claims are adequately substantiated by records.

TTB Analysis

TTB recognizes that wines covered by a certificate of exemption are not subject to the substantive labeling requirements of the FAA Act. On the other hand, the IRC (which covers wines sold in intrastate commerce as well as wines sold in interstate commerce) clearly provides TTB with authority to issue regulations requiring truthful and accurate information on wine containers and labels regarding the identity and origin of the wine. As previously noted, section 5388(a) of the IRC requires that wines be marked, transported and sold under their "proper designation as to kind and origin, or, if there is no such designation known to the trade or consumers, then under a truthful and adequate statement of composition." If proprietors choose to label their wines with varietal (grape type) designations, type designations of varietal significance, vintage dates, or appellations of origin, all of which are terms of art that are subject to specific rules set forth in the FAA Act regulations, then those designations may convey to both the trade and consumers the meaning that is ascribed to them in the regulations under part 4.

It should be noted that this issue is not unique to wine. TTB has adopted a similar policy with regard to the labeling of distilled spirits under the IRC regulations in part 19, which require distilled spirits labeled under a certificate of exemption from label approval to include certain labeling designations and statements in compliance with the requirements of the FAA Act labeling regulations in 27 CFR part 5. See 27 CFR 19.517.

Accordingly, TTB is proposing to revise its regulations in §§ 24.257(b) and 24.314 to apply the part 4 rules for use of varietal (grape type) designations, type designations of varietal significance, vintage dates, and appellations of origin on wine labels to standard grape wine that is at least 7 percent alcohol by volume, where that wine is covered by a certificate of exemption from label approval. This amendment would ensure that the rules for the use of those designations of the origin or kind of a wine under section 5388(a) of the IRC are consistent with the existing rules for the use of those designations under the FAA Act.

TTB is proposing to apply this requirement only to standard grape wines that contain at least 7 percent or more alcohol by volume because the labeling of wines that contain less than 7 percent alcohol by volume is not subject to the provisions of the FAA Act. While wines under 7 percent alcohol by volume are subject to the IRC labeling requirements of part 24, as well as the health warning statement requirements of part 16, those products do not fall under the definition of wine under the FAA Act. Thus, those products are subject to the food labeling requirements of the regulations issued by the U.S. Food and Drug Administration. Because the part 4 regulations limit the use of varietal (grape type) designations, type designations of varietal significance, vintage dates, and AVAs to grape wines, TTB is similarly proposing that the new provisions would apply solely to standard grape wines.

TTB is not proposing in this document to extend this provision to include non-grape wines. However, TTB seeks comments and additional information on whether the amendments proposed in this document should be extended to non-grape wines, such as fruit wines or agricultural wines.

Accordingly, TTB proposes to amend § 24.257 to require that a standard grape wine that contains 7 percent or more alcohol by volume and is covered by a certificate of exemption from label approval may not be labeled with a varietal (grape type) designation, a type designation of varietal significance, a vintage date, or an appellation of origin unless the wine complies with the relevant part 4 provisions for that label information. This requirement would apply only to wines covered by certificates of exemption, because wines covered by certificates of label approval are already subject to the labeling provisions of part 4. Wines that are not standard grape wine containing 7 percent or more alcohol by volume and that are covered by a certificate of exemption are exempt from all part 4 labeling provisions. TTB also proposes to make corresponding changes in the recordkeeping requirements of § 24.314.

Finally, TTB is also proposing to revise § 4.50(b) to incorporate a reference to the labeling requirements contained in § 24.257.

Technical Changes

TTB also is removing the Office of Management and Budget control numbers assigned to the former Bureau of Alcohol, Tobacco and Firearms (ATF) and replacing them with the control numbers assigned currently to TTB. In § 24.257, the former control number 1512–0503, assigned to ATF, is now control number 1513–0092, assigned to TTB. In § 24.314, the former control number 1512–0298 is now control number 1513–0115. The changes to these control numbers are merely technical in nature and do not change any regulatory or recordkeeping requirement.

Public Participation

Comments Sought

TTB requests comments from interested members of the public on the proposed change. Additionally, TTB welcomes comments on whether the new provisions should include non-grape wines. Finally, TTB solicits comments on how many labels would be affected by the proposed amendments, and how much time affected proprietors would need in order to revise their labels to comply with the proposed changes. Please provide specific information in support of your comments.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this proposed rule within Docket No. TTB–2016–0005 on "*Regulations.gov,*" the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 160 on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov.* For complete instructions on how to use *Regulations.gov,* click on the site's "Help" tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 160 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments and considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name as well as your name and position title. In your comment via *Regulations.gov,* please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this proposed rule and any online or mailed comments received about this proposal within Docket No. TTB–2016–0005 on the Federal e-rulemaking portal. A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 160. You may also reach the relevant docket through the *Regulations.gov* search page at *http://www.regulations.gov.* For information on how to use *Regulations.gov,* click on the site's "Help" tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You may view copies of this proposed rule and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies for 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule, if adopted, will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), TTB will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small businesses.

TTB recognizes that if the proposed rule is adopted as a final rule, some bottlers of wine may have to make revisions to labels currently covered by certificates of exemption; however, we believe that the number of affected labels will be small. TTB specifically solicits comments on the number of small producers and bottlers that may be affected by this proposed rule and the impact of this proposed rule, if adopted as a final rule, on those small businesses.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Paperwork Reduction Act

The two collections of information affected by this notice of proposed rulemaking have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned control numbers 1513–0092 and 1513–0115. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The proposed regulatory text in 27 CFR 24.257 contains an alteration to the information collection currently approved under OMB control number 1513–0092. If adopted, this revision would require changes in the labeling of certain wines currently covered by a certificate of exemption from label approval, where those wines are labeled with varietal (grape type) designations, type designations of varietal significance, vintage dates, or appellations of origin, in a manner that would not be allowed under the standards set forth in the regulations in 27 CFR part 4. However, since the labeling of wines, whether covered by certificates of exemption or by certificates of label approval, is a usual and customary business practice and would be done by proprietors with or without the TTB regulatory requirement, TTB does not believe that there would be any increase in the current burden hours associated with this information collection. We are, however, reporting an increase in the number of respondents to this collection, from 10,506 to 10,970, to reflect the current number of wine industry members regulated by TTB. We estimate the current burden associated with this information collection as follows:

- *Estimated Number of Respondents:* 10,970.
- *Estimated Annual Frequency of Responses:* 1 (one).
- *Estimated Average Annual Total Burden Hours:* 1 hour.

The proposed regulatory text in 27 CFR 24.314 contains an alteration to the information collection currently approved under OMB control number 1513–0115. If adopted, this revision would require proprietors to keep records substantiating certain information contained on the labels of certain wines currently covered by a certificate of exemption from label approval, where those wines are labeled with varietal (grape type) designations, type designations of varietal significance, vintage dates, or appellations of origin. In particular, the records would have to substantiate that the claims would be allowed under the standards for use of such claims under the regulations in 27 CFR part 4. However, since the keeping of records substantiating the information provided on wine labels, whether covered by certificates of exemption or by certificates of label approval, is a usual and customary business practice and would be done by proprietors with or without the TTB regulatory requirement, TTB does not believe that there would be any increase in the current burden for this information collection, which is estimated as follows:

- *Estimated Number of Respondents:* 10,970.
- *Estimated Annual Frequency of Responses:* 1 (one).
- *Estimated Average Annual Total Burden Hours:* 1 hour.

Revisions of these two currently approved collections have been submitted to OMB for review. Comments on the revisions to OMB control number 1513–0092 and 1513–0115 should be sent to OMB by one of these two methods:

- *By U.S. Mail:* Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503; or
- *By E-mail: submission@omb.eop.gov.*

A copy should also be sent to the Alcohol and Tobacco Tax and Trade Bureau by any of the methods previously described. Comments on the information collection should be submitted not later than August 22, 2016. Comments are specifically requested concerning:

- Whether the proposed revisions of the collections of information approved under OMB control number 1513–0115 and 1513–0092 are necessary for the proper performance of the functions of the Alcohol and Tobacco Tax and Trade Bureau, including whether the information will have practical utility;
- The accuracy of the estimated burdens associated with the proposed revisions of the collections of information;
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed revision of the collection of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Drafting Information

Jennifer Berry of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects

27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

Proposed Regulatory Amendments

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter I, parts 4 and 24 as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

■ 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 2. Section § 4.50 is amended by adding a sentence to the end of paragraph (b) to read as follows:

§ 4.50 Certificates of label approval.

* * * * *

(b) * * * See § 24.257 of this chapter for additional labeling rules that apply to wines covered by a certificate of exemption.

* * * * *

PART 24—WINE

■ 3. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 4. Section § 24.257 is amended by revising paragraph (b) and by revising the OMB control number located in the second parenthetical phrase at the end of the section, to read as follows:

§ 24.257 Labeling wine containers.

* * * * *

(b) *Requirements applicable to information on labels*—(1) *Verification and recordkeeping requirements.* The information shown on any label applied to bottled or packed wine is subject to the verification and recordkeeping requirements of § 24.314.

(2) *Varietal designations, type designations of varietal significance, grape vintage dates, and appellations of origin.* For wines covered by a certificate of exemption from label approval, the use of any label that includes a varietal (grape type) designation, a type designation of varietal significance, a grape vintage date, or an appellation of origin for any standard grape wine containing 7 percent or more alcohol by volume is prohibited unless the wine would be entitled to use of such a labeling term under the standards set forth in the following sections of 27 CFR part 4:

(i) *Varietal (grape type) designation.* The use of a varietal (grape type) designation must conform to the requirements of § 4.23 of this chapter;

(ii) *Type designation of varietal significance.* The use of a type designation of varietal significance must conform to the requirements of § 4.28 of this chapter;

(iii) *Vintage date.* The use of a vintage date must conform to the requirements of § 4.27 of this chapter; and

(iv) *Appellation of origin.* The use of an appellation of origin must conform to the requirements of § 4.25 of this chapter.

* * * * *

(Approved by the Office of Management and Budget under control number 1513–0092)

■ 5. Section 24.314 is amended to read as follows:

§ 24.314 Label information record.

(a) *General.* A proprietor who removes bottled or packed wine with information stated on the label (*e.g.*, varietal, vintage, appellation of origin, analytical data, date of harvest) shall have complete records, as applicable, so that the information appearing on the label may be verified by a TTB audit. A wine is not entitled to have information stated on the label unless the information can be readily verified by a complete and accurate record trail from the beginning source material to removal of the wine for consumption or sale.

(b) *Establishing that wine is entitled to labeling claims.* A proprietor must keep records that will enable TTB to verify that the labeling of the wine complies with the applicable labeling requirements in this part. In addition, if wine is subject to Federal Alcohol Administration Act labeling provisions under 27 CFR part 4, the records must establish that the labeling of the wine complies with the applicable labeling provisions of 27 CFR part 4. For wines covered by a certificate of exemption, the use of any label that includes a varietal (grape type) designation, a type designation of varietal significance, a grape vintage date, or an appellation of origin for any standard grape wine containing 7 percent or more alcohol by volume is prohibited unless the proprietor has records establishing that the use of such a term complies with the standards set forth in the appropriate sections of 27 CFR part 4 for use of such a labeling term.

(c) *Record retention.* All records necessary to verify wine label information are subject to the record retention requirements of § 24.300(d).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

(Approved by the Office of Management and Budget under control number 1513–0115)

Signed: April 7, 2016.

John J. Manfreda,

Administrator.

Approved: April 22, 2016.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2016–14696 Filed 6–21–16; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO–T–2016–0002]

RIN 0651–AD07

Changes in Requirements for Affidavits or Declarations of Use, Continued Use, or Excusable Nonuse in Trademark Cases

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: In order to assess and promote the accuracy and integrity of the trademark register, the United States Patent and Trademark Office (USPTO or Office) proposes to amend its rules concerning the examination of affidavits or declarations of continued use or excusable nonuse filed pursuant to section 8 of the Trademark Act, or affidavits or declarations of use in commerce or excusable nonuse filed pursuant to section 71 of the Trademark Act. Specifically, the USPTO proposes to require the submission of information, exhibits, affidavits or declarations, and such additional specimens of use as may be reasonably necessary for the USPTO to ensure that the register accurately reflects marks that are in use in the United States for all the goods/services identified in the registrations, unless excusable nonuse is claimed in whole or in part. A register that does not accurately reflect marks in use in the United States for the goods/services identified in registrations imposes costs and burdens on the public. The proposed rules will allow the USPTO to require additional proof of use to verify the accuracy of claims that a trademark is in use in connection with particular goods/services identified in the registration.

DATES: Comments must be received by August 22, 2016 to ensure consideration.

ADDRESSES: The USPTO prefers that comments be submitted via electronic mail message to *TMFRNotices@uspto.gov.* Written comments may also be submitted by mail to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Jennifer Chicoski; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, VA, 22314, attention Jennifer Chicoski; or by electronic mail message via the Federal eRulemaking Portal at *http://www.regulations.gov.* See the Federal eRulemaking Portal Web site for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO–T–2016–0002).

The comments will be available for public inspection on the USPTO's Web site at *http://www.uspto.gov,* on the Federal eRulemaking Portal, and at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, VA 22314. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: Jennifer Chicoski, Office of the Deputy Commissioner for Trademark

Examination Policy, by email at *TMPolicy@uspto.gov,* or by telephone at (571) 272–8943.

SUPPLEMENTARY INFORMATION:

Purpose: The USPTO proposes to revise the rules in parts 2 and 7 of title 37 of the Code of Federal Regulations to allow the USPTO, during the examination of affidavits or declarations of continued use or excusable nonuse filed pursuant to section 8 of the Trademark Act, 15 U.S.C. 1058, or affidavits or declarations of use in commerce or excusable nonuse filed pursuant to section 71 of the Trademark Act, 15 U.S.C. 1141k (section 8 or section 71 affidavits), to require the submission of such information, exhibits, affidavits or declarations, and such additional specimens of use as may be reasonably necessary for the USPTO to verify the accuracy of claims that a trademark is in use in connection with the goods/services listed in the registration.

This will benefit the public by facilitating the USPTO's ability to assess and promote the integrity of the trademark register by encouraging accuracy in the identification of goods/services for which use or continued use is claimed. The accuracy of the trademark register as a reflection of marks that are actually in use in the United States for the goods/services identified in the registrations listed therein serves an important purpose for the public. The public relies on the register to determine whether a chosen mark is available for use or registration. Where a party's search of the register discloses a potentially confusingly similar mark, that party may incur a variety of resulting costs and burdens, such as those associated with investigating the actual use of the disclosed mark to assess any conflict, proceedings to cancel the registration or oppose the application of the disclosed mark, civil litigation to resolve a dispute over the mark, or changing plans to avoid use of the party's chosen mark. If a registered mark is not actually in use in the United States, or is not in use in connection with all the goods/services identified in the registration, these costs and burdens may be incurred unnecessarily. An accurate and reliable trademark register helps avoid such needless costs and burdens.

The proposed rules also facilitate the cancellation of registrations for marks that were never in use or are no longer in use, and for which acceptable claims of excusable nonuse were not submitted, in connection with the identified goods/services. The statutory requirements in sections 8 and 71 exist to enable the USPTO to clear the register of deadwood by cancelling, in whole or in part, registrations for marks that are not in use for all or some of the goods/services identified in the registration. The proposed rules further this statutory purpose.

Background

Post Registration Proof-of-Use Pilot Program: A final rule was published in the **Federal Register** on May 22, 2012 (77 FR 30197), in which the USPTO announced a two-year pilot program to assess and promote the accuracy and integrity of the trademark register. The USPTO randomly selected 500 registrations for which section 8 and section 71 affidavits were filed to participate in the pilot program to determine the actual use of the marks in connection with the goods/services identified in the registrations. The selected registrations comprised a sample of the four statutory registration bases, that is, Trademark Act sections 1(a), 44(e), 66(a), and 1(a) and 44(e) combined (dual basis). 15 U.S.C. 1051(a), 1126(e), 1141(e). In each case, the trademark owner had submitted, as part of its section 8 or section 71 affidavit, a sworn statement that all the goods/services identified in the registration or otherwise set forth in the filing were presently in use in commerce. None of the selected registrations included claims of excusable nonuse.

As part of the pilot program, the selected trademark owners were required to submit proof of use of their marks for two additional goods/services per class, in addition to the one specimen per class submitted with their affidavits, and to verify use of the additional goods/services during the statutory filing period. The USPTO randomly selected the two specific goods/services for which additional proof of use was required. If the owner's response to the inquiry did not fully address the requirements, or included a request to delete the identified goods/services, the USPTO required further proof of use to verify the accuracy of the goods/services identified in the registration. If the registration owner responded by providing acceptable proof of use and satisfying any other outstanding requirements as to the underlying maintenance filing, a notice of acceptance was issued. The pilot concluded with all 500 registrations receiving either a notice of acceptance of the affidavit or declaration or a notice of cancellation of the registration.

Summary of Results: In 51% of the 500 registrations selected for the pilot, the trademark owners failed to supply additional verified proof of use on specific goods/services for which use was initially claimed. Of this 51%, in 35% of the registrations, the owner requested that some goods/services that were initially claimed to be in use be deleted, and the remaining 16% of the registrations were cancelled because the trademark owners failed to respond to the requirements for additional proof or to any other issues raised during examination of the section 8 or section 71 affidavit. Ultimately, the section 8 and section 71 affidavits were accepted for 84.4%, or 422 registrations, which included acceptances issued after goods/services queried under the pilot were deleted.

Identifying Procedures to Assess and Promote the Accuracy and Integrity of the Trademark Register: The status reports issued throughout the course of the pilot all supported the need for ongoing efforts aimed at ensuring the accuracy and integrity of the trademark register as to the actual use of marks in connection with the goods/services identified in the registrations. To that end, the USPTO held a roundtable discussion on December 12, 2014 for various stakeholder groups, requested written comments from interested parties to further explore the topic, and discussed the topic at several other outreach sessions. During the roundtable discussion and outreach sessions, one suggestion that received widespread support was to establish a permanent program similar to the proof-of-use pilot.

The USPTO proposes herein a permanent program where it would conduct random audits of up to 10% of the combined total of section 8 and section 71 affidavits filed each year in which the mark is registered for more than one good or service per class. As part of the review of the selected affidavits, in addition to the one specimen of use per class currently required, owners would be required to provide additional proof of use in the nature of information, exhibits, affidavits or declarations, and specimens showing use for some of the additional goods/services listed beyond that shown in the one specimen per class.

The USPTO anticipates issuing an Office action that would specify the goods/services that will require the submission of the additional information, exhibits, affidavits or declarations, and specimens. The trademark owners would be afforded the usual response period to the Office action, that is, a response would be due within six months of the issuance date of the Office action, or before the end of the statutory filing period for the section 8 or section 71 affidavit, whichever is later. 37 CFR 2.163(b), 7.39(a). If the trademark owner responds, but is ultimately unable to provide the requested information, exhibits, affidavits or declarations, and specimens, the USPTO would deem the section 8 or section 71 affidavit unacceptable as to the goods/services to which the requirement pertained and will cancel such goods/services from the registration. If no response to the Office action is filed within six months of the issuance date of the Office action, or before the end of the statutory filing period for the section 8 or section 71 affidavit, whichever is later, the USPTO would cancel the entire registration, unless time remains in the grace period under section 8(a)(3) or section 71(a)(3) of the Act. 15 U.S.C. 1058(a)(3), 1141k(a)(3); 37 CFR 2.163(c), 7.39(b). If time remains in the grace period, the owner may file a complete new section 8 or section 71 affidavit, with a new fee and grace-period surcharge. 37 CFR 2.161(d)(2), 7.36(b)(3).

The purpose of the program is to substantiate claims of use and discourage inaccuracies within these maintenance filings and continued registration of marks that are no longer in use for the listed goods/services. In Fiscal Year 2015, approximately 147,496 section 8 and 5,000 section 71 affidavits were filed.

Discussion of Proposed Regulatory Changes

The USPTO proposes to amend 37 CFR 2.161 and 7.37 to provide that the USPTO may require such information, exhibits, affidavits or declarations, and such additional specimens of use as may be reasonably necessary for the USPTO to assess and promote the accuracy and integrity of the register. The current rules mandate the submission of only one specimen per class in connection with a section 8 or section 71 affidavit unless additional information, exhibits, affidavits or declarations, or specimens are necessary for proper examination of the affidavit itself. 37 CFR 2.161(g) and (h), 7.37(g) and (h). This revision will allow the USPTO to require additional proof of use of a mark not only to facilitate proper examination of a section 8 or section 71 affidavit, but also to verify the accuracy of claims that a trademark is in use on or in connection with the goods/services identified in the registration.

The USPTO proposes to revise § 2.161(h) to add the phrase "or for the Office to assess and promote the accuracy and integrity of the register" at the end of the paragraph.

The USPTO proposes to revise § 7.37(h) to add the phrase "or for the Office to assess and promote the accuracy and integrity of the register" at the end of the paragraph.

Rulemaking Requirements

Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez* v. *Mortg. Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (interpretive rules "advise the public of the agency's construction of the statutes and rules which it administers") (citation and internal quotation marks omitted); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez,* 135 S. Ct. at 1206 (notice-and-comment procedures are required neither when an agency "issue[s] an initial interpretive rule" nor "when it amends or repeals that interpretive rule"); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice," quoting 5 U.S.C. 553(b)(A)). However, the USPTO has chosen to seek public comment before implementing the rule.

Initial Regulatory Flexibility Analysis

The USPTO publishes this Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) to examine the impact of the Office's proposed changes to the requirements for section 8 and section 71 affidavits on small entities and to seek the public's views. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish a notice of proposed rulemaking (NPRM), the agency must prepare and make available for public comment an IRFA, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1) through (5) to be addressed in an IRFA. Item 6 below discusses alternatives to this proposal that the Office considered.

1. Description of the Reasons That Action by the Office Is Being Considered

The USPTO proposes to require any information, exhibits, affidavits or declarations, and such additional specimens deemed reasonably necessary to assess and promote the accuracy and integrity of the trademark register in connection with the examination of a section 8 or section 71 affidavit. Post registration affidavits under section 8 or section 71, and their accompanying specimens of use, demonstrate a registration owner's continued use of its mark in commerce for the goods/services identified in the registration. The proposed revisions will facilitate the USPTO's ability to ensure that the register accurately reflects marks that are in use in commerce that may be regulated by the U.S. Congress for the goods/services identified therein.

2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rules

The objective of the proposed rulemaking is to allow the USPTO to assess and promote the integrity of the trademark register. The Trademark Act gives the Director of the USPTO discretion regarding the number of specimens to require. 15 U.S.C. 1051(a)(1), (d)(1), 1058(b)(1)(C), 1141k(b)(1)(C). The current rules mandate the submission of only one specimen per class in connection with a section 8 or section 71 affidavit unless additional information, exhibits, affidavits or declarations, or specimens are necessary for proper examination of the affidavit itself. 37 CFR 2.161(g), (h), 7.37(g), (h). However, these rules do not currently allow the Office to require additional specimens or other information or exhibits in order to verify that the mark is in use on additional goods/services listed in the registration. The proposed rules will allow the USPTO to properly examine the nature and veracity of allegations of use made in connection with the submission of a section 8 or section 71 affidavit, and thereby assess and promote the integrity of the register by verifying that the register accurately reflects the goods/

services for which use is claimed for a given registered mark.

3. Description and Estimate of the Number of Affected Small Entities

The USPTO does not collect or maintain statistics in trademark cases on small- versus large-entity registrants, and this information would be required in order to estimate the number of small entities that would be affected by the proposed rules. However, the USPTO believes that the overall impact of the proposed rules on registrants will be relatively minimal.

After registration, trademark owners must make periodic filings with the USPTO to maintain their registrations. A section 8 or section 71 affidavit is a sworn statement in which the registrant specifies the goods/services/collective membership organization for which the mark is in use in commerce and/or the goods/services/collective membership organization for which excusable nonuse is claimed. 15 U.S.C. 1058, 1141k. The purpose of the section 8 and section 71 affidavits is to facilitate the cancellation, by the Director of the USPTO, of registrations of marks no longer in use in connection with the goods/services/collective membership organization identified in the registrations. The proposed rules would apply to any entity filing a section 8 or section 71 affidavit, but only a subset of trademark owners would be required to provide more than one specimen or additional information, exhibits, or specimens in connection with the audit. The USPTO is unable to estimate the subset of trademark owners who are small entities that are impacted by the proposed rules. In Fiscal Year 2015, approximately 147,496 section 8 and 5,000 section 71 affidavits were filed.

4. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed rules impose no new recordkeeping requirements on trademark registrants.

Regarding compliance with the proposed rules, as an initial matter, the USPTO does not anticipate the proposed rules to have a disproportionate impact upon any particular class of small or large entities. Any entity that has a registered trademark in which the mark is registered for more than one good or service per class could potentially be impacted by the proposed rules.

The USPTO anticipates that it may conduct random audits of up to 10% of the combined total of section 8 and section 71 affidavits filed each year in which the mark is registered for more than one good or service per class. In those post registration cases where an initial requirement for additional information, exhibits, affidavits or declarations, and specimens is issued in an Office action, and assuming that an attorney is representing the registrant, the USPTO estimates it will take approximately one hour to comply. To that end, the USPTO provides an online electronic form for responding to Office actions.

Similar to the submission necessary for the statutorily required section 8 and section 71 affidavits, a response to an Office action issued in connection with these affidavits will generally necessitate gathering and submitting one or more specimens of use and an accompanying declaration. Therefore, under the proposed rules, the type of fact gathering and review of the nature and extent of the use of the mark that underlies a section 8 or section 71 affidavit will already have occurred. Compliance with the proposed requirement will only necessitate gathering and submitting the additional evidence to demonstrate and support what has previously been assessed.

Assuming the mark is in use, as claimed, the compliance time involves the length of time to secure additional information, exhibits, affidavits or declarations, or specimens and accompanying declaration, plus any time it takes an attorney to communicate with the client in order to obtain what is required and make the necessary filing with the USPTO. In practice, approximately one-third of section 8 and section 71 affidavits are filed pro se. These trademark owners are likely to have a shorter compliance time than the USPTO has estimated, which assumes the involvement of an attorney. The proposed rules do not mandate the use of legal counsel.

5. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Rule on Small Entities

The USPTO has considered whether and how it is appropriate to reduce any burden on small businesses through increased flexibility. The following alternatives were considered, but rejected, by the USPTO.

USPTO considered an alternative where it would not require additional information, exhibits, affidavits or declarations, and specimens in connection with section 8 or section 71 affidavits, or where it would exempt small entities from such requirements. This alternative would have a lesser economic impact on small entities, but was rejected because it would not accomplish the stated objective of assessing and promoting the integrity of the trademark register by verifying that marks are in use for the goods/services identified in the registration. As noted above, the results of the post registration proof-of-use pilot supported the need for ongoing efforts aimed at assessing and promoting the accuracy and integrity of the register as to the actual use of marks in connection with the goods/services identified in the registrations. Subsequent outreach efforts revealed widespread support for continuing the pilot program on a permanent basis. Exempting small entities would prevent consideration of all section 8 and section 71 affidavits and not achieve the stated objective of assessing and promoting the accuracy and integrity of the register.

The stated objective of the proposed rules also facilitates the cancellation of registrations for marks that are no longer in use or that were never used, and for which acceptable claims of excusable nonuse were not submitted, in connection with the identified goods/services. The statutory requirements in sections 8 and 71 exist to enable the USPTO to clear the register of deadwood by cancelling, in whole or in part, registrations for marks that are not in use for all or some of the goods/services identified in the registration. The proposed rules further this statutory purpose. Exempting small entities from possible scrutiny regarding use allegations would fail to address marks not used by them, thereby not achieving the objective.

USPTO considered a second alternative that would extend the time period for compliance by small entities, however this was rejected because there appears to be no reason that meeting the requirements of the proposed rules would be more time consuming for small entities. The USPTO's standard six-month time period for responding to Office actions allows sufficient time regardless of small-entity status.

Finally, USPTO considered an alternative that would streamline or simplify the compliance mechanism for small entities, but it was deemed unnecessary given the ease of responding electronically to Office actions using the Trademark Electronic Application System Response to Post Registration Office Action form. Thus, under the proposed rule, compliance will be as streamlined and simplified as possible for all affected entities. Moreover, where the objective is to verify the accuracy of a claim of use in a section 8 or section 71 affidavit, the proposed requirements for additional information, exhibits, affidavits or declarations, and specimens demonstrating the manner of use of the mark in connection with the specified goods/services are the least burdensome and most efficient means of achieving the objective of assessing and promoting and assessing the accuracy and integrity of the register by verifying allegations of use.

Use of performance rather than design standards is not applicable to the proposed rulemaking because the USPTO is not issuing any sort of standard. The proposed rules will require registrants to furnish evidence of use, rather than comply with a performance or design standard.

6. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

The proposed rules do not duplicate, overlap or conflict with any other Federal rules.

Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule changes; (2) tailored the rules to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

Paperwork Reduction Act: This rulemaking involve information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this rule has been reviewed and previously approved by OMB under control numbers control numbers 0651–0051 and 0651–0055.

You may send comments regarding the collections of information associated with this rule, including suggestions for reducing the burden, to (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Nicholas A. Fraser, the Desk Officer for the United States Patent and Trademark Office; and (2) The Commissioner for Trademarks, by mail to P.O. Box 1451, Alexandria, VA 22313–1451, attention Catherine Cain; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, VA 22314, attention Catherine Cain; or by electronic mail message via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO–T–2016–0002).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 7

Administrative practice and procedure, International registration, Trademarks.

For the reasons stated in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the USPTO proposes to amend parts 2 and 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2, Section 10 of Pub. L. 112–29, unless otherwise noted.

■ 2. Amend § 2.161 by revising paragraph (h) to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

* * * * *

(h) The Office may require the owner to furnish such information, exhibits, affidavits or declarations, and such additional specimens as may be reasonably necessary to the proper examination of the affidavit or declaration under section 8 of the Act or for the Office to assess and promote the accuracy and integrity of the register.

* * * * *

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

■ 3. The authority citation for 37 CFR part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 4. Amend § 7.37 by revising paragraph (h) to read as follows:

§ 7.37 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse.

* * * * *

(h) The Office may require the holder to furnish such information, exhibits, affidavits or declarations, and such additional specimens as may be reasonably necessary to the proper examination of the affidavit or declaration under section 71 of the Act or for the Office to assess and promote the accuracy and integrity of the register.

* * * * *

Dated: June 16, 2016.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2016–14791 Filed 6–21–16; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2015–0032; FRL–9947–32]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before July 22, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*, Susan Lewis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

New Tolerances

PP 5F8380. EPA–HQ–OPP–2015–0745. Bayer CropScience, 2 TW Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180.555 for residues of the fungicide trifloxystrobin in or on: Cotton, gin byproducts at 3 parts per million (ppm); and cotton, undelinted seed (Crop subgroup 20C) at 0.5 ppm. Either gas chromatography with nitrogen-phosphorus detection, or liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) are used to measure and evaluate the chemical trifloxystrobin and the free form of its acid metabolite CGA–321113 ((*E,E*)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid). Contact: RD.

PP 5F8417. EPA–HQ–OPP–2015–0787. K–I Chemical USA. Inc., 11 Martine Ave., Suite 970, White Plains, NY 10606, requests to establish tolerances in 40 CFR 180.659 for residues of the herbicide, pyroxasulfone (3-[(5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl) pyrazole-4-ylmethylsulfonyl]-4,5-dihydro-5,5-dimethyl-1,2-oxazole) and its metabolites in or on dried shelled peas and beans (crop subgroup 6C) at 0.09 ppm, flax at 0.01 ppm, peanut at 0.2 ppm, and peanut hay at 2 ppm. The LC/MS/MS has been proposed to enforce the tolerance expression for pyroxasulfone. Contact: RD.

PP 5F8421. EPA–HQ–OPP–2015–0825. BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide topramezone (3-(4,5-Dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl]-(5-hydroxyl-1-methyl-1H-pyrazol-4-yl)methanone) in or on sugarcane, cane at 0.01 ppm. The LC/MS/MS is used to measure and evaluate the chemical topramezone (3-(4,5-Dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl]-(5-hydroxyl-1-methyl-1H-pyrazol-4-yl)methanone). Contact: RD.

PP 6E8464. EPA–HQ–OPP–2016–0257. Interregional Research No. 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180.627 for residues of the fungicide fluopicolide [2,6-dichloro-N-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide], including its metabolites and degradates, in or on the raw agricultural commodities: Basil, dried leaves at 200 ppm; basil, fresh leaves at 30 ppm; bean, succulent at 0.9 ppm; citrus, dried pulp at 0.048 ppm; citrus, oil at 1.94 ppm; hop, dried cones at 15 ppm; fruit, citrus, group10–10 at 0.02 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.0 ppm; and vegetable, fruiting, group 8–10 at 1.60 ppm. The analytical method consisting of high pressure LC/MS/MS is used to measure and evaluate the chemical fluopicolide. Contact: RD.

PP 6E8467. EPA–HQ–OPP–2016–0255. IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for the residues of the insecticide spirotetramat (cis-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl-ethyl carbonate) and its metabolites cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one, cis-3-(2,5-dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro[4.5]decane-2,4-dione, cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl beta-D-glucopyranoside, and cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]decan-2-one, calculated as the stoichiometric equivalent of spirotetramat, in or on the raw agricultural commodities carrot, roots at 0.15 ppm; fruit, stone, group 12–12 at 4.5 ppm; and nut, tree, group 14–12 at 0.25 ppm. Analytical methodology to determine residues of spirotetramat in raw agricultural commodities includes high pressure LC/MS/MS using the stable isotopically labeled analytes as internal standards. The limit of quantification (LOQ) for each analyte is 0.01 ppm for all commodities. This method is used to measure and evaluate spirotetramat. Contact RD.

PP 6E8477. EPA–HQ–OPP–2013–0235. IR–4, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide chlorantraniliprole, 3-bromo-N-[4-chloro-2-methyl-6-[(methylamino)-carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide in or on the raw agricultural commodities teff, forage at 40 ppm; teff, grain at 6.0 ppm; teff, hay at 40 ppm; teff, straw at 40 ppm; quinoa, forage at 40 ppm; quinoa, grain at 6.0 ppm; quinoa, hay at 40 ppm; and quinoa, straw at 40 ppm. Analytical methodology has been developed and validated for enforcement purposes. Contact: RD.

Amended Tolerances

PP 5F8380. EPA–HQ–OPP–2015–0745. Bayer CropScience, 2 TW Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, requests to amend the tolerance in 40 CFR 180.555 for residues of the fungicide trifloxystrobin in or on corn, field, forage at 8 ppm. Either a method based on gas chromatography with nitrogen-phosphorus detection, or LC/MS/MS are used to measure and evaluate the chemical trifloxystrobin and the free form of its acid metabolite CGA–321113 ((E,E)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid). Contact: RD.

PP 6E8464. EPA–HQ–OPP–2016–0257. IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend the tolerances in 40 CFR 180.627, upon establishment of the tolerances referenced above under “New Tolerances”, to remove existing tolerances for residues of the fungicide fluopicolide [2,6-dichloro-N-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl]benzamide], including its metabolites and degradates, in or on the raw agricultural commodities grape at 2.0 ppm and vegetable, fruiting, group 8 at 1.60 ppm. The analytical method consisting of LC/MS/MS is used to measure and evaluate the chemical fluopicolide. Contact: RD.

PP 6E8467. EPA–HQ–OPP–2016–0255. IR–4, IR–4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, New Jersey, 08540, requests to amend 40 CFR part 180.641 by removing the established tolerances for the residues of the insecticide spirotetramat (cis-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl-ethyl carbonate) and its metabolites cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one, cis-3-(2,5-dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro[4.5]decane-2,4-dione, cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl beta-D-glucopyranoside, and cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]decan-2-one, calculated as the stoichiometric equivalent of spirotetramat, in or on fruit, stone, group 12 at 4.5 ppm; nut, tree, group 14 at 0.25 ppm; and pistachio at 0.25 ppm upon establishment of aforementioned "New Tolerances under PP 6E8467". Contact RD.

New Tolerance Exemptions

PP 5F8410. EPA–HQ–OPP–2016–0284. AFS009 Plant Protection, Inc., 104 T.W. Alexander Dr., Building 18, Research Triangle Park, NC 27709, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide *Pseudomonas chlororaphis* subsp. *aurantiaca* strain AFS009 in or on all food commodities. The petitioner believes no analytical method is needed because it is expected that, when used as proposed, *Pseudomonas chlororaphis* subsp. *aurantiaca* strain AFS009 would not result in residues that are of toxicological concern. Contact: BPPD.

PP 6G8453. EPA–HQ–OPP–2016–0279. Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, MO 63167, requests to establish a temporary exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectant (PIP) *Bacillus thuringiensis* Cry51Aa2.834_16 (mCry51Aa2) protein in or on cotton. The petitioner believes no analytical method is needed because this petition is requesting a temporary exemption from the requirement of a tolerance without numerical limitation. Contact: BPPD.

Authority: 21 U.S.C. 346a.

Dated: June 13, 2016.

Daniel J. Rosenblatt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–14816 Filed 6–21–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 457

[CMS–6068–P]

RIN 0938–AS74

Medicaid/CHIP Program; Medicaid Program and Children's Health Insurance Program (CHIP); Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM) programs based on the changes to Medicaid and the Children's Health Insurance Program (CHIP) eligibility under the Patient Protection and Affordable Care Act. This proposed rule would also implement various other improvements to the PERM program.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 22, 2016.

ADDRESSES: In commenting, please refer to file code CMS–6068–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6068–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6068–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Bridgett Rider, (410) 786–2602.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

Acronyms

AFR	Agency Financial Report
AT	Account Transfer file
CFR	Code of Federal Regulations
CHIP	Children's Health Insurance Program
CHIPRA	Children's Health Insurance Program Reauthorization Act of 2009
CMS	Centers for Medicare and Medicaid Services
DAB	Departmental Appeals Board
DHHS	Department of Health and Human Services
DP	Data Processing
ELA	Express Lane Agency
ELE	Express Lane Eligibility
EOB	Explanation of Benefits
ERC	Eligibility Review Contractor
FFM	Federally Facilitated Marketplace
FFM–A	Federally Facilitated Marketplace-Assessment
FFM–D	Federally Facilitated Marketplace-Determination
FFP	Federal Financial Participation
FFS	Fee-For-Service
FFY	Federal Fiscal Year
FMAP	Federal Medical Assistance Percentages
FY	Fiscal Year
HHS	Health and Human Services
HIPP	Health Insurance Premium Payments
IFC	Interim Final Rule with Comment period
IPERA	Improper Payments Elimination and Recovery Act
IPERIA	Improper Payments Elimination and Recovery Improvement Act
IPIA	Improper Payments Information Act
IRFA	Initial Regulatory Flexibility Analysis
MAGI	Modified Adjusted Gross Income
MEQC	Medicaid Eligibility Quality Control
MSO	Medicaid State Operations
OMB	Office of Management and Budget
PCCM	Primary Care Case Management
PERM	Payment Error Rate Measurement
RC	Review Contractor
RFA	Regulatory Flexibility Act
RIA	Regulatory Impact Analysis
SC	Statistical Contractor
SHO	State Health Official
the Act	Social Security Act
UMRA	Unfunded Mandates Reform Act

I. Background

A. Introduction

The Medicaid Eligibility Quality Control (MEQC) program at § 431.810 through § 431.822 implements section 1903(u) of the Social Security Act (the Act) and requires states to report to the Secretary the ratio of states' erroneous excess payments for medical assistance under the state plan to total expenditures for medical assistance. Section 1903(u) of the Act sets a 3 percent threshold for eligibility-related improper payments in any fiscal year (FY) and generally requires the Secretary to withhold payments to states with respect to the amount of improper payments that exceed the threshold. The Act requires states to provide information, as specified by the Secretary, to determine whether they have exceeded this threshold.

The Payment Error Rate Measurement (PERM) program was developed to implement the requirements of the Improper Payments Information Act (IPIA) of 2002 (Pub. L. 107–300), which requires the heads of federal agencies to review all programs and activities that they administer to determine and identify any programs that are susceptible to significant erroneous payments. If programs are found to be susceptible to significant improper payments, then the agency must estimate the annual amount of erroneous payments, report those estimates to the Congress, and submit a report on actions the agency is taking to reduce improper payments. IPIA was amended by Improper Payments Elimination and Recovery Act of 2010 (IPERA) (Pub. L. 111–204) and the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA) (Pub. L. 112–248).

The IPIA directed OMB to provide guidance on implementation; OMB provides such guidance for IPIA, IPERA, and IPERIA in OMB circular A–123 App. C. OMB defines "significant improper payments" as annual erroneous payments in the program exceeding (1) both $10 million and 1.5 percent of program payments, or (2) $100 million regardless of percentage (OMB M–15–02, OMB Circular A–123, App. C October 20, 2014). Erroneous payments and improper payments have the same meaning under OMB guidance. For those programs found to be susceptible to significant erroneous payments, federal agencies must provide the estimated amount of improper payments and report on what actions the agency is taking to reduce those improper payments, including setting targets for future erroneous payment levels and a timeline by which the targets will be reached. Section 2(b)(1) of IPERA clarified that, when meeting IPIA and IPERA requirements, agencies must produce a statistically valid estimate, or an estimate that is otherwise appropriate using a methodology approved by the Director of the Office of Management and Budget (OMB). IPERIA further clarified requirements for agency reporting on actions to reduce improper payments and recover improper payments.

The Medicaid program and the Children's Health Insurance Program (CHIP) were identified as at risk for significant erroneous payments. As set forth in OMB Circular A–136, Financial Reporting Requirements, for IPIA reporting, the Department of Health and Human Services (DHHS) reports the estimated improper payment rates (and other required information) for both programs in its annual Agency Financial Report (AFR).

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) was enacted on February 4, 2009. Sections 203 and 601 of the CHIPRA relate to the PERM program. Section 203 of the CHIPRA amended sections 1902(e)(13) and 2107(e)(1) of the Act to establish a state option for an express lane eligibility (ELE) process for determining eligibility for children and an error rate measurement for the enrollment of children under the ELE option. ELE provides states with important new avenues to expeditiously facilitate children's Medicaid or CHIP enrollment through a fast and simplified eligibility determination or renewal process by which states may rely on findings made by another program designated as an express lane agency (ELA) for eligibility factors including, but not limited to, income or household size. Section 1902(e)(13)(E) of the Act, as amended by the CHIPRA, specifically addresses error rates for ELE. States are required to conduct a separate analysis of ELE error rates, applying a 3 percent error rate threshold, and are directed not to include those children who are enrolled in the State Medicaid plan or the State CHIP plan through reliance on a finding made by an ELA in any data or samples used for purposes of complying with a MEQC review or as part of the PERM measurement. Section 203(b) of the CHIPRA directed the Secretary to conduct an independent evaluation of children who enrolled in Medicaid or CHIP plans through the ELE option to determine the percentage of children who were erroneously enrolled in such plans, the effectiveness of the option, and possible legislative or administrative recommendations to more effectively enroll children through reliance on such findings.

Section 601(a)(1) of the CHIPRA amended section 2015(c) of the Act, and provided a 90 percent federal match for CHIP spending related to PERM administration and excluded such spending from the CHIP 10 percent administrative cap. (Section 2105(c)(2) of the Act generally limits states to using no more than 10 percent of the CHIP benefit expenditures for administrative costs, outreach efforts, additional services other than the standard benefit package for low-income children, and administrative costs.)

Section 601(b) of the CHIPRA required that the Secretary issue a new PERM rule and delay any calculations of a PERM improper payment rate for CHIP until 6 months after the new PERM final rule was effective. Section 601(c) of the CHIPRA established certain standards for such a rule, and section 601(d) of the CHIPRA provided that states that were scheduled for PERM measurement in FY 2007 could elect to accept a CHIP PERM improper payment rate determined in whole or in part on the basis of data for FY 2007, or could elect instead to consider its PERM measurement conducted for FY 2010 as the first fiscal year for which PERM applies to the state for CHIP. This same section provided that states that were scheduled for PERM measurement in FY 2008 could elect to accept a CHIP PERM improper payment rate determined in whole or in part on the basis of data for FY 2008, or could elect instead to consider its PERM measurement conducted for FY 2010 or FY 2011 as the first fiscal year for which PERM applies to the state for CHIP. The new PERM rule required by the CHIPRA was to include the following:

- Clearly defined criteria for errors for both states and providers.
- Clearly defined processes for appealing error determinations.
- Clearly defined responsibilities and deadlines for states in implementing any corrective action plans (CAPs).
- Requirements for state verification of an applicant's self-declaration or self-certification of eligibility for, and correct amount of, medical assistance under Medicaid or child health assistance under CHIP.
- State-specific sample sizes for application of the PERM requirements.

The Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as the Affordable Care Act) was enacted in March 2010. The Affordable Care Act mandated changes to the Medicaid and CHIP eligibility processes and policies to simplify enrollment and increase the share of eligible persons that are enrolled and covered. Some of the key changes applicable to all states, regardless of a state decision to expand Medicaid coverage, include:

- Use of Modified Adjusted Gross Income (MAGI) methodologies for income determinations and household compositions for most applicants.
- Use of the single streamlined application (or approved alternative) for intake of applicant information.
- Availability of multiple application channels for consumers to submit application information, such as mail, fax, phone, or on-line.
- Use of a HHS-managed data services hub for access to federal verification sources.
- Need for account transfers and data sharing between the state- or federal-Marketplace, Medicaid, and CHIP to avoid additional work or confusion by consumers.
- Reliance on data-driven processes for 12 month renewals.
- Use of applicant self-attestation of most eligibility elements as of January 1, 2014, with reliance on electronic third-party data sources for verification, if available.
- Enhanced 90 percent federal financial participation (FFP) match for the design, development, installation, or enhancement of the state's eligibility system.

In light of the implementation of the Affordable Care Act's major changes to the Medicaid and CHIP eligibility and enrollment provisions, and our continued efforts to comply with IPERIA and the CHIPRA, an interim change in methodology was implemented for conducting Medicaid and CHIP eligibility reviews under PERM. As described in the August 15, 2013 State Health Official (SHO) letter (SHO# 13–005), instead of the PERM and MEQC eligibility review requirements, we required states to participate in the Medicaid and CHIP Eligibility Review Pilots from FY 2014 to FY 2016 to support the development of a revised PERM methodology that provides informative, actionable information to states and allows CMS to monitor program administration. A subsequent SHO letter dated October 7, 2015 (SHO# 15–004) extended the Medicaid and CHIP Eligibility Review Pilots for one additional year.

B. Regulatory History

1. Medicaid Eligibility Quality Control (MEQC) Program

The MEQC program implements section 1903(u) of the Act, which defines erroneous excess payments as payments for ineligible persons and overpayments for eligible persons. Section 1903(u) of the Act instructs the Secretary not to make payment to a state with respect to the portion of its erroneous payments that exceed a 3 percent error rate, though the statute also permits the Secretary to waive all or part of that payment restriction if a state demonstrates that it cannot reach the 3 percent allowable error rate despite a good faith effort.

Regulations implementing the MEQC program are at 42 CFR subpart P—Quality Control. The regulations specify the sample and review procedures for the MEQC program and standards for good faith efforts to keep improper payments below the error rate threshold. From its implementation in 1978 until 1994, states were required to follow the as-promulgated MEQC regulations in what was known as the traditional MEQC program. Every month, states reviewed a random sample of Medicaid cases and verified the categorical and financial eligibility of the case members. Sample sizes had to meet minimum standards, but otherwise were at state option.

For cases in the sample found ineligible, the claims for services received in the review month were collected, and error rates were calculated by comparing the amount of such claims to the total claims for the universe of sampled claims. The state's calculated error rate was adjusted based on a federal validation subsample to arrive at a final state error rate. This final state error rate was calculated as a point estimate, without adjustment for the confidence interval resulting from the sampling methodology. States with error rates over 3 percent are subject under those regulations to a disallowance of FFP in all or part of the amount of FFP over the 3 percent error rate.

States prevailed in challenges to disallowances based on the MEQC system, at HHS's Departmental Appeals Board (DAB), HHS's final level of administrative review. The DAB concluded that the MEQC sampling protocol and the resulting error rate calculation were not sufficiently accurate to provide reliable evidence to support a disallowance based on an actual error rate that exceeded the 3 percent threshold.

Although the MEQC system remained in place, we provided states with an alternative to the MEQC program that was focused on prospective improvements in eligibility determinations rather than disallowances. These changes, outlined in Medicaid State Operations (MSO) Letter #93–58 dated July 23, 1993, provided states with the option to continue operating a traditional MEQC program or to conduct what we termed "MEQC pilots" that did not lead to the calculation of error rates. These pilots continue today. States choosing the latter pilot option have generally operated, on a year-over-year basis, year-long pilots focused on state-specific areas of interest, such as high-cost or high-risk eligibility categories and problematic eligibility determination processes. These pilots review specific program areas to determine whether problems exist and produce findings the state agency can address through corrective actions, such as policy changes or additional training.

Over time, most states have elected to participate in the pilots; 39 states now operate MEQC pilots, while just 12 maintain traditional MEQC programs.

2. Payment Error Rate Measurement (PERM) Program

Promulgated as a result of the IPIA and OMB guidance, a proposed rule published in the August 27, 2004 **Federal Register** (69 FR 52620) set forth proposed provisions establishing the PERM program by which states would annually be required to estimate and report improper payments in the Medicaid program and CHIP. The state-reported, state-specific improper payment rates were to be used to compute the national improper payment estimates for these programs.

In the October 5, 2005 **Federal Register** (70 FR 58260), we published a PERM interim final rule with comment period (IFC) that responded to public comments on the proposed rule and informed the public of both our national contracting strategy and plan to measure improper payments in a subset of states. That IFC described that a state's Medicaid program and CHIP would be subject to PERM measurement just once every 3 years; the 3 year period is referred to as a cycle, and the year in which a state is measured is known as its PERM year. In response to the public comments from that IFC, we published a second IFC in the August 28, 2006 **Federal Register** (71 FR 51050) that reiterated our national contracting strategy to estimate improper payments in both Medicaid and CHIP fee-for-service (FFS) and managed care. We set forth, and invited comments on, state requirements for estimating improper payments due to Medicaid and CHIP eligibility determination errors. We also announced that a state's Medicaid program and CHIP would be reviewed during the same cycle.

In the August 31, 2007 **Federal Register** (72 FR 50490), we published a PERM final rule that finalized state requirements for: (1) Submitting claims to the federal contractors that conduct FFS and managed care reviews; (2) conducting eligibility reviews; and (3) estimating payment error rates due to errors in eligibility determinations.

3. 2010 Final Rule: Revisions to MEQC and PERM To Meet the CHIPRA Requirements

In the July 15, 2009 **Federal Register** (74 FR 34468), we published a proposed rule proposing revisions, as required by the CHIPRA, to the MEQC and PERM programs, including changes to the PERM review process. In the August 11, 2010 **Federal Register** (75 FR 48816), we published a final rule, which became effective on September 10, 2010, for the MEQC and PERM programs that codified several procedural aspects of the process for estimating improper payments in Medicaid and CHIP, including: Changes to state-specific sample sizes to reduce state burden, the stratification of universes to obtain required precision levels, eligibility sampling requirements, the modification of review requirements for self-declaration or self-certification of eligibility, the exclusion of children enrolled through the ELE from the PERM measurement, clearly defined "types of payment errors" to clarify that errors must affect payments for the purpose of the PERM program, a clearly defined difference resolution and appeals process, and state requirements for implementation of CAPs.

Section 601(e) of the CHIPRA required harmonizing the MEQC and PERM programs' eligibility review requirements to improve coordination of the two programs, decrease duplicate efforts, and minimize state burden. To comply with the CHIPRA, the final rule granted states the flexibility, in their PERM year, to apply PERM data to satisfy the annual MEQC requirements, or to apply "traditional" MEQC data to satisfy the PERM eligibility component requirements.

The final rule permitted a state to use the same data, such as the same sample, eligibility review findings, and payment review findings, for each program. However, the CHIPRA permits substituting PERM and MEQC data only where the MEQC review is conducted under section 1903(u) of the Act, so only states using the "traditional" MEQC methodology may employ this substitution option. Also, each state, with respect to each program (MEQC and PERM) is still required to develop separate error/improper payment rate calculations.

II. Provisions of the Proposed Regulation

We are proposing the following changes to part 431 to address the eligibility provisions of the Affordable Care Act, as well as to make improvements to the PERM eligibility reviews.

A. MEQC Program Revision

Section 1903(u) of the Act requires the review of Medicaid eligibility to identify erroneous payments, but it does not specify the manner by which such reviews must occur. The MEQC program was originally created to implement the requirements of section 1903(u) of the Act, but the PERM program, implemented subsequent to MEQC and under other legal authority, likewise reviews Medicaid eligibility to identify erroneous payments. As noted previously, the CHIPRA required harmonizing the MEQC and PERM programs and allowed for certain data substitution options between the two programs, to coordinate consistent state implementation to meet both sets of requirements and reduce redundancies. Because states are subject to PERM reviews only once every 3 years, we propose to meet the requirements in section 1903(u) of the Act through a combination of the PERM program and a revised MEQC program that resembles the current MEQC pilots, by which the revised MEQC program would provide measures of a state's erroneous eligibility determinations in the 2 off-years between its PERM cycle.

As previously noted, states currently may satisfy our requirements by conducting either a traditional MEQC program or MEQC pilots, with the majority of states (39) electing the latter due to the pilots' flexibility to target specific problematic or high-interest areas. The revised MEQC program we propose here would eliminate the traditional MEQC program and, instead, formalize, and make mandatory, the pilot approach. During the 2 off-years between each state's PERM years, when a state is not reviewed under the PERM program, we propose that it conduct one MEQC pilot spanning that 2 year period. The revised regulations we propose here would conform the MEQC program to how the majority of states have applied the MEQC pilots through the administrative flexibility we granted states decades ago to meet the requirements of section 1903(u) of the Act. Assuming this rule is finalized as proposed, we believe such MEQC pilots will provide states with the necessary flexibility to target specific problem or high-interest areas as necessary. As a matter of semantics, note that in this proposed rule we continue to use the term "pilots," which sometimes connote short-term studies or projects, because they are not fixed or defined projects, but, rather, as just described, states will have flexibility to adapt pilots to target particular areas.

We further propose to take a similar approach here to "freezing" error rates as we took when we initially introduced MEQC pilots 2 decades ago. In 1994, when we introduced MEQC pilots we offered states the ability to "freeze" their error rates until they resumed traditional MEQC activities. In a similar vein, we now propose to freeze a state's most recent PERM eligibility improper payment rate during the 2 off-years between a state's PERM cycles, when the state will be conducting an MEQC pilot. As noted previously, section 1903(u) of the Act sets a 3 percent threshold for improper payments in any period or fiscal year and generally requires the Secretary to withhold payments to states with respect to the amount of improper payments that exceed the threshold. Therefore, we propose freezing the PERM eligibility improper payment rate as it allows each state a chance to test the efficacy of its corrective actions as related to the eligibility errors identified during its PERM year. Our proposal also allows states a chance to implement prospective improvements in eligibility determinations before having their next PERM eligibility improper payment measurement performed, where identified improper payments would be subject to potential payment reductions and disallowances under 1903(u) of the Act.

We propose to revise § 431.800 to revise and clarify the MEQC program basis and scope.

We propose to delete § 431.802 as federal financial participation, state plan requirements, and the requirement for the MEQC program to meet section 1903(u) of the Act would no longer be applicable to the revised MEQC program.

We propose to revise § 431.804 by adding definitions for "corrective action," "deficiency," "eligibility," "Medicaid Eligibility Quality Control (MEQC)," "MEQC Pilot," "MEQC review period," "negative case," "off years," "Payment Error Rate Measurement (PERM)," and "PERM year."

We propose to revise the definitions for "active case," and "eligibility error," and remove "administrative period," "claims processing error," "negative case action," and "state agency." We are adding, revising, or removing definitions to provide additional clarification for the proposed MEQC program revisions.

We propose to revise § 431.806 to reflect the state requirements for the MEQC pilot program. Section 431.806 clarifies that following the end of a state's PERM year, it would have up to November 1 to submit its MEQC pilot planning document for our review and approval.

We propose to revise § 431.810 to clarify the basic elements and requirements of the MEQC program.

We propose to revise § 431.812 to clarify the review procedures for the MEQC program. As described earlier, the CHIPRA required harmonizing the PERM and MEQC programs and authorized us to permit states to use PERM to fulfill the requirements of section 1903(u) of the Act; the existing regulation at § 431.812(f), permitting states to substitute PERM-generated eligibility data to meet MEQC program requirements, was promulgated under the CHIPRA authority. Given that the Congress, in the CHIPRA, directed the Secretary to harmonize the PERM and MEQC programs and expressly permitted states to substitute PERM for MEQC data, we believe that the PERM program, with the proposed revisions discussed in subpart Q, meets the requirements of section 1903(u) of the Act.

Our proposed approach would continue to harmonize the PERM and MEQC programs. It would reduce the redundancies associated with meeting the requirements of two distinct programs. As noted earlier, the CHIPRA, with certain limitations, allows for substitution of MEQC data for PERM eligibility data. Through our proposed approach, in their PERM year, states would participate in the PERM program, while during the 2 off-years between a state's PERM cycles they would conduct a MEQC pilot, markedly reducing states' burden. Moreover, we are proposing to revise the methodology for PERM eligibility reviews, as discussed below in §§ 431.960 through 431.1010. The MEQC pilots would focus on areas not addressed through PERM reviews, such as negative cases and understated/overstated liability, as well as permit states to conduct focused reviews on areas identified as error-prone through the PERM program, so the proposed new cyclical PERM/MEQC rotation would yield a complementary approach to ensuring accurate eligibility determinations.

By conducting eligibility reviews of a sample of individuals who have received services matched with Title XIX or XXI funds, the PERM program would, under our proposal, continue to focus on identifying individuals receiving medical assistance under the Medicaid or CHIP programs who are, in fact, ineligible. Such PERM eligibility reviews conform with section 1903(u) of the Act's requirement that states measure erroneous payments due to ineligibility. Likewise, these eligibility reviews would continue under the MEQC pilots during states' off-years and include a review of Medicaid spend-down as a condition of eligibility, conforming with other state measurement requirements of section 1903(u) of the Act. We would calculate a state's eligibility improper payment rate during its PERM year, which would remain frozen at that level during its 2 off-years when it conducts its MEQC pilot. Again, freezing states' eligibility improper payment rates between PERM cycles would allow states time to work on effective and efficacious corrective actions which would improve their eligibility determinations. This approach also encourages states to pursue prospective improvements to their eligibility determination systems, policies, and procedures before their next PERM cycle, in which an eligibility improper payment rate would be calculated with the potential for payment reductions and disallowances to be invoked, in the event that a state's eligibility improper payment rate is above the 3 percent threshold.

1. Revised MEQC Review Procedures

For more than 2 decades, the majority of states have used the flexibility of MEQC pilots to review state-specific areas of interest, such as high-cost or high-risk eligibility categories and problematic eligibility determination processes. This flexibility has been beneficial to states because it made MEQC more useful from a corrective action standpoint.

We propose that MEQC pilots focus on cases that may not be fully addressed through the PERM review, including, but not limited to, negative cases and payment reviews of understated and overstated liability. Still, under our proposal, states would retain much of their current flexibility. In § 431.812, we propose that states must use the MEQC pilots to perform both active and negative case reviews, but states would have flexibility surrounding their active case review pilot. In the event that a state's eligibility improper payment rate is above the 3 percent threshold for two consecutive PERM cycles, we propose this flexibility would decrease as states would be required to comply with CMS guidance to tailor the active case reviews to a more appropriate MEQC pilot which would be based upon a state's PERM eligibility findings. In order to ensure states with consecutive PERM eligibility improper payment rates over the threshold, are identifying and conducting MEQC active case reviews which are appropriate during their off-years, CMS would provide direction for conducting a MEQC pilot that would suitably address the error-prone areas identified through the state's PERM review. Both the PERM and MEQC pilot programs are operationally complementary, and should be treated in a manner that allows for states to review identified issues, develop corrective actions, and effectively implement prospective improvements to their eligibility determinations.

Active and negative cases represent the eligibility determinations made for individuals which either approve or deny an individual's eligibility to receive benefits and/or services under Medicaid or CHIP. Individuals who are found to be eligible and authorized to receive benefits/services are termed active cases, whereas individuals who are found to be ineligible for benefits are known as negative cases. As proposed at § 431.812(b)(3) a state may focus its active case reviews on three defined areas, unless otherwise directed by us or, as proposed at § 431.812(b)(3)(i), it may perform a comprehensive review that does not limit its review of active cases. Additionally, we propose that the MEQC pilots must include negative cases because we also propose to eliminate PERM's negative case reviews; our proposal would ensure continuing oversight over negative cases to ensure the accuracy of state determinations to deny or terminate eligibility.

Under the new MEQC pilot program, we propose that states review, a minimum total of 400 Medicaid and CHIP active cases. We propose that at least 200 of those reviews must be Medicaid cases and expect that states will include some CHIP cases, but, beyond that, we propose that states would have the flexibility to determine the precise distribution of active cases. For example, a state could sample 300 Medicaid and 100 CHIP active cases; it would describe its active sample distribution in its MEQC pilot planning document that it would submit to us for approval. Under the new MEQC pilot program, we also propose that states review, at a minimum, 200 Medicaid and 200 CHIP negative cases. Currently, under the PERM program, states are required to conduct approximately 200 negative case reviews for each the Medicaid program and CHIP (204 is the base sample size, which may be adjusted up or down from cycle to cycle depending on a state's performance). We propose a minimum total negative sample size of 400 (200 for each program) for the proposed MEQC pilots because, as mentioned above and discussed further below, we propose to eliminate PERM's negative case reviews.

Historically, MEQC's case reviews (both active and negative) focused solely on Medicaid eligibility determinations. Here, we propose that the new MEQC pilots would now include both Medicaid and CHIP eligibility case reviews. Because we propose to eliminate PERM's negative case reviews, it is important that we concomitantly expand the MEQC pilots to include the review of no less than 200 CHIP negative cases to ensure that CHIP applicants are not inappropriately denied or terminated from a state's program. In the event that CHIP funding should end, then states would be required to review only Medicaid active and negative cases, as there would no longer be any cases associated with CHIP funding.

We will provide states with guidelines for conducting these MEQC pilots, and we propose that states must submit MEQC pilot planning documents for CMS's approval. This approach will ensure that states are planning to conduct pilots that are suitable and in accordance with our guidance.

This proposed rule would require states to conduct one MEQC pilot during their 2 off-years between PERM cycles. We propose that the MEQC pilot review period span 12 months, beginning on January 1, following the end of the state's PERM review period. For instance, if a state's PERM review period is July 1, 2018 to June 30, 2019, the next proposed MEQC pilot review period would be January 1–December 31, 2020. We propose at § 431.806 that a state would have up to November 1 following the end of its PERM review period to submit its MEQC pilot planning document for CMS review and approval. Following a state's MEQC pilot review period, we propose it would have up to August 1 to submit a CAP based on its MEQC pilot findings.

Following publication of the final rule, states will not all be at the same point in the MEQC pilot program/PERM timeline. The impact of the proposed MEQC timeline for each cycle of states is clarified below to assist each cycle of states in understanding when the proposed MEQC requirements would apply.

- *Cycle 1 States:* First PERM review period under new rule: July 2017–June 2018; First MEQC pilot planning document due by November 1, 2018; MEQC review period would be January 1–December 31, 2019; MEQC pilot program findings and CAP reported to CMS by August 1, 2020.
- *Cycle 2 States:* Further CMS guidance will be provided regarding the implementation of a modified MEQC pilot program that will occur prior to the beginning of your first PERM cycle under the new rule. First PERM review period under new rule: July 2018–June 2019; Second MEQC pilot planning document due by November 1, 2019.
- *Cycle 3 States:* First MEQC pilot planning document due by November 1, 2017; MEQC review period would be January 1–December 31, 2018; MEQC pilot program findings and CAP reported to CMS by August 1, 2019; First PERM review period under new rule: July 2019–June 2020.

2. MEQC Pilot Planning Document

We propose to revise § 431.814 to clarify the revised sampling plan and procedures for the MEQC pilot program. We propose that states be required to submit, for our approval, a MEQC Pilot Planning Document that would detail how it would propose to perform its active and negative case reviews. This process is consistent with that used historically with MEQC pilots and also with the FY 2014–2017 Medicaid and CHIP Eligibility Review Pilots. Prior to the first proposed submission cycle, we would provide states with guidance containing further details informing them of what information would need to be included in the MEQC Pilot Planning Document.

3. Timeline and Reporting for MEQC Pilot Program

We propose to revise § 431.816 to clarify the case review completion report submission deadlines. We propose that states be required to report, through a CMS-approved Web site and in a CMS-specified format, on all sampled cases by August 1 following the end of the MEQC review period, which we believe will streamline the reporting process and ensure that all findings are contained in a central location.

We propose to revise § 431.818 to remove the mailing requirements and the time requirement.

4. MEQC Corrective Actions

We propose to revise § 431.820 to clarify the corrective action requirements under the proposed MEQC pilot program. Corrective actions are critical to ensuring that states continually improve and refine their eligibility processes. Under the existing MEQC program, states must conduct corrective actions on all identified case errors, including technical deficiencies, and we propose here that states continue to be required to conduct corrective actions on all errors and deficiencies identified through the proposed MEQC pilot program.

We propose that states report their corrective actions to CMS by August 1 following completion of the MEQC pilot review period, and that such reports also include updates on the life cycles of previous corrective actions, from implementation through evaluation of effectiveness.

We propose to delete § 431.822, as we would no longer be performing a federal case eligibility review of the revised MEQC program.

5. MEQC Disallowances

Section I.B.1, above, provides a detailed regulatory history of CMS's implementation of the MEQC program, and, in conformity with CMS's policy since 1993, we propose not using the revised MEQC pilot program to reduce payments or to institute disallowances. Instead, we propose to formalize the MEQC pilot process to align all states in one cohesive pilot approach to support and encourage states during their 2 off-years between PERM cycles to address, test, and implement corrective actions that would assist in the improvement of their eligibility determinations. This approach also better harmonizes and synchronizes the MEQC pilot and PERM programs, leaving them operationally complementary. Additionally, our proposal would be advantageous to all states as they each would be exempt from potential payment reductions and disallowances while conducting their MEQC pilot, therefore placing the main focus of the pilots solely on the refinement and improvement of their eligibility determinations. Based on this approach, we propose that each state's eligibility improper payment rate would be calculated in its PERM year, and that its rate would be frozen at that level during its off-years when it would conduct an MEQC pilot and implement corrective actions.

As previously discussed, the CHIPRA authorized certain PERM and MEQC data substitution, and we believe that the PERM eligibility improper payment rate determination methodology satisfies the requirements of section 1903(u) of the Act to be used for that provision's payment reduction (and potential disallowance) requirement. Section 1903(u)(1)(B) of the Act permits the Secretary to waive, in whole or part, section 1903(u)(1)(a)'s required payment reductions if a state is unable to reach an allowable improper payment rate for a period or a fiscal year despite the state's good faith effort. What constitutes a state's good faith effort is outlined at the proposed § 431.1010(b). As part of the proposed good faith effort, we propose that a state's participation in the proposed MEQC pilot program in conformity with §§ 431.800 through 431.820 of this proposed regulation, and its implementation of PERM CAPs in accordance with § 431.992 would be essential elements to the showing of a state's good faith effort. Conversely, should a state's eligibility improper payment rate exceed 3 percent, and should that state fail to comply with all elements of § 431.1010(b) in demonstrating a good faith effort, we propose, in accordance with section 1903(u)(1)(a) of the Act, to reduce its FFP for medical assistance by the percentage by which the lower limit of its eligibility improper payment rate exceeds three percent. We define a state's failure to comply with all elements of the proposed § 431.1010(b), as a lack of a good faith effort to reach the allowable error rate. We propose to use the lower limit of the eligibility improper payment rate per guidance issued by us prior to the implementation of the present MEQC pilots. Therefore, we propose to require states to use PERM to meet section 1903(u) of the Act requirements in their PERM years, and that potential payment reductions or disallowances only be invoked under the PERM program. Therefore, we propose to delete § 431.865.

6. Payment Error Rate Measurement (PERM) Program

We are proposing the revisions described below to the PERM program. Our proposed PERM eligibility component revisions have been tested and validated through multiple rounds of PERM model pilots with 15 states and through discussion with state and non-state stakeholders. The PERM model pilots were distinct from the separate FY 2014–2017 Medicaid and CHIP Eligibility Review Pilots, and were used to assess, test, and recommend changes to PERM's eligibility component review process based on the changes implemented by the Affordable Care Act. Specifically, we tested, and asked for stakeholder feedback on, options in the following areas (below, there is more detail on each):

- Universe definition
- Sample unit definition
- Eligibility Case review approach
- Feasibility of using a federal contractor to conduct the eligibility case reviews
- Difference resolution and appeals process

Through the PERM model pilots, we have determined that each of the proposed changes support the goals of the PERM program and will produce a valid, reliable eligibility improper payment rate. We also interviewed participating states, as well as a select group of other states, to receive feedback on the majority of the proposed changes, and, to the extent possible, we have addressed state concerns in this proposed rule.

7. Payment Error Rate Measurement (PERM) Measurement Review Period

Since PERM began in 2006, the measurement has been structured around the federal fiscal year, (FFY) with states submitting FFS claims and managed care payments with paid dates that fall in the FFY under review. But, a data collection centered around the FFY has made it perennially challenging to finalize the improper payment rate measurement and conduct all the related reporting to support an improper payment rate calculation by November of each year. Therefore, to provide states and CMS additional time to complete the work related to each PERM cycle prior to the annual improper payment rate publication in the AFR, to better align PERM with many state fiscal year timeframes, and to mirror the review period currently utilized in the Medicare FFS improper payment measurement program, we propose to change the PERM review period from a FFY to a July through June period. We propose to begin this change with the Cycle 1 states, whose PERM cycle would have started on October 1, 2017, so that Cycle 1 states would submit their 1st and 4th quarters of FFS claims and managed care payments with paid dates between, respectively, July 1–September 30, 2017 and April 1–June 30, 2018. Subsequent cycles would follow a similar review period.

We propose to revise § 431.950 to clarify the requirement for states and providers to submit information and provide support to federal contractors to produce national improper payment estimates for Medicaid and CHIP.

We propose various revisions to § 431.958 to add, revise, or remove definitions to provide greater clarity for the proposed PERM program changes. Proposed additions and revisions include definitions for "appeals," "corrective action," "deficiency," "difference resolution," "disallowance," "Eligibility Review Contractor (ERC)," "error," "federal contractor," "Federally facilitated marketplace-determination (FFM–D)," "Federal financial participation," "finding," "Improper payment rate," "Lower limit," "PERM review period," "recoveries," "Review Contractor (RC)," "Review year," "State-specific sample size," "State eligibility system," "State error," "State payment system," "Statistical Contractor (SC)," and removing the definitions of "active case," "active fraud investigation," "agency," "case," "case error rate," "case record," "last action," "negative case," "payment error rate," "payment review," "review cycle," "sample month," "state agency," and "undetermined."

We propose to revise § 431.960 to remove references to negative case reviews and improper payments because a separate negative case review will no longer be a part of the PERM review process, as well as to provide greater clarity for the proposed PERM program changes. Note that while a separate negative case review would not be conducted as part of the proposed PERM review process, it could be possible for a negative case to be reviewed, because the claims universe includes claims that have been denied. If a sampled denied claim was denied because the beneficiary was not eligible for Medicaid/CHIP benefits on the date of service, PERM would review the state's decision to deny eligibility.

We propose to revise § 431.972(a) to specify that states would be required to submit FFS claims and managed care payments for the new PERM Review Period.

8. Eligibility Federal Review Contractor and State Responsibilities

Under the existing § 431.974, states conduct PERM eligibility reviews. Since the first PERM eligibility cycle in FY 2007, we have found that conducting PERM eligibility reviews significantly burdens state resources, and because the reviews require substantial staff resources, many states have struggled to meet review timelines. Moreover, we have found that having states conduct PERM eligibility reviews has created significant opportunity for the PERM eligibility review guidance to be misinterpreted and inconsistently applied across states, with, for example, states having difficulty interpreting the universe definitions and case review guidelines.

To confront these challenges, we propose to utilize a federal contractor (known as the ERC) to conduct the eligibility reviews on behalf of states. This proposal would concomitantly reduce states' PERM program burden and ensure more consistent guidance interpretation, thereby reducing case review inconsistencies across states and improving eligibility processes related to case reviews and reporting. A federal contractor would be able to apply consistent standards and quality control processes for the reviews and improve CMS's ability to oversee the process, so improper payments would be reported consistently across states. Moreover, the ERC would allow us to gain a better national view of improper payments to better support the corrective action process and ensure accurate and timely eligibility determinations, while a third-party review team would be more consistent with standard auditing practices and our other improper payment measurement programs.

Our PERM model pilot testing has confirmed that having a federal contractor conduct eligibility reviews is feasible and improves our oversight of the process, as an experienced federal contractor can apply PERM guidance consistently across states while continuing to recognize unique state eligibility policies, processes, and systems. Further, through the pilots, we have developed processes to ensure that the federal contractor works collaboratively with state staff to ensure that the reviews are consistent with state eligibility policies and procedures.

While states would not, under our proposal, continue to conduct PERM eligibility reviews, we envision that they would still play a role, as needed, in supporting the federal contractor. We therefore propose to add state supporting role requirements by proposing to revise § 431.970 to outline data submission and state systems access requirements to support the PERM eligibility reviews and the ERC.

Under § 431.10(c)(1)(i)(A)(3), state Medicaid agencies may delegate authority to determine eligibility for all or a defined subset of individuals to the Exchange, including Exchanges operated by a state or by HHS. Those states that have delegated the authority to make Medicaid/CHIP eligibility determinations to an Exchange operated by HHS, known as the Federally Facilitated Marketplace (FFM), are described as determination states, or FFM–D states. By contrast, those states that receive information from the FFM, which makes assessments of Medicaid/CHIP eligibility, but where the applicant's account is transferred to the state for the final eligibility determination, are known as assessment states, or FFM–A states.

We propose that states would be responsible for providing the ERC with eligibility determination policies and procedures, and any case documentation requested by the ERC, which could include the account transfer (AT) file for any claims where the individual was determined eligible by the FFM in a determination state (FFM–D), or was passed on to the state by the FFM for final determination in assessment states (FFM–A).

Further, under this proposal, if the ERC finds that it cannot complete a review due to insufficient supporting documentation, it would expect the state to provide it. States would determine how to obtain the requested documentation (we do not propose to charge the ERC with conducting additional outreach, such as client contact) and, if unable to do so to enable to ERC to complete the review, the ERC would cite the case as an improper payment due to insufficient documentation. We also propose that states would be responsible for providing the ERC with direct access to their eligibility system(s). A state's eligibility system(s) (including any electronic document management system(s)) contains data the ERC must review, including application information, third party data verification results, and copies of required documentation (for example, pay stubs), and we believe that allowing the ERC direct access would best enable it to timely and accurately complete its reviews and reduce state burden that would otherwise be required to inform the ERC's reviews.

To ensure that states continue to have a measure of oversight, however, we propose allowing states the opportunity to review the ERC's case findings prior to their being finalized and used to calculate the national and state improper payment rate. Through a difference resolution and appeals process, states would have the opportunity to resolve disagreements with the ERC. Based on our pilot testing, we believe that open communication between the state and the ERC would best foster states' understanding of the review process and the basis for any findings.

9. Eligibility Review Procedures

As just discussed, we are proposing that a federal contractor would conduct the eligibility case reviews, and states' responsibilities would therefore be limited. Because we propose state responsibilities at § 431.970, we propose to delete § 431.974.

10. Eligibility Sampling Plan

We propose to delete § 431.978; because the proposed ERC would conduct the eligibility reviews, states would no longer be required to submit a sampling plan. In place of the sampling plan, the ERC would draft state-specific eligibility case review planning documents outlining how it would conduct the eligibility review, including the relevant state-specific eligibility policy and system information.

11. Eligibility Review Procedures

We propose to delete § 431.980; this section presently specifies the review procedures required for states to follow while performing the PERM eligibility component reviews. States would no longer be required to conduct the PERM eligibility component reviews, because the proposed ERC would conduct the eligibility reviews.

12. Eligibility Case Review Completion Deadlines and Submittal of Reports

We propose to delete § 431.988; this section presently specifies states' requirements and deadlines for reporting PERM eligibility review data, which functions we propose to transition to an ERC.

13. Payment System Access Requirements

The Claims Review Contractor (RC) currently conducts PERM reviews on FFS and managed care claims for the Medicaid program and CHIP, and is required to conduct Data Processing (DP) reviews on each sampled claim to validate that the claim was processed correctly based on information found in the state's claim processing system and other supporting documentation maintained by the state. We believe that in order for the RC to review claims during the review cycle, reviewers would need remote or on-site access to appropriate state systems. If the RC is unable to review pertinent claims information, and the state is not able to comply with all information submission and systems access requirements as specified in the proposed rule, the payment under review may be cited as an error due to insufficient documentation.

To facilitate the RC's reviews, we propose that states grant it access to systems that authorize payments, including: FFS claims payments; Health Insurance Premium Payment (HIPP) payments; Medicare buy-in payments; aggregate payments for providers; capitation payments to health plans; and per member per month payments for Primary Care Case Management (PCCM) or non-emergency transportation programs. We propose that states also grant the RC access to systems that contain beneficiary demographics and provider enrollment information to the extent such information is not included in the payment system(s), and to any imaging systems that contain images of paper claims and explanation of benefits (EOBs) from third party payers or Medicare.

Experience has demonstrated that some states have allowed the RC only partial and/or untimely systems access, which we believe has led to a slower review process. Based on our discussions with the states, we believe their sometimes permitting just limited systems access is due to a lack of processes to grant access (for example, requiring contractors to complete access forms and training) rather than state bans on providing outside contractors with access due to privacy or cost concerns. Therefore, we propose adding paragraphs (c) and (d) to § 431.970, which would require states to provide access to appropriate and necessary systems.

14. Universe Definition

To meet IPERIA requirements, the samples used for PERM eligibility reviews must be taken from separate universes: One that includes Title XIX Medicaid dollars and one that includes Title XXI CHIP dollars. Section 431.978(d)(1) currently defines the Medicaid and CHIP active universes as all active Medicaid or CHIP cases funded through Title XIX or Title XXI for the sample month, with certain exclusions. Developing an accurate and complete universe is essential to developing a valid, accurate improper payment rate.

In previous PERM cycles, sampling universe development has been one of the most difficult steps of the eligibility review. Varying data availability and system constraints have made it challenging to maintain consistency in state-developed eligibility universes; developing the eligibility universe may require substantial staff resources, and the process may take several data pulls that are often conducted by IT staff or outside contractors not closely involved in the PERM eligibility review process.

During the PERM model pilots, we tested three PERM eligibility review universe definition options, including defining the universe by: (1) Eligibility determinations and redeterminations (that is, a universe of eligibility decisions); (2) actual beneficiaries or recipients (that is, a universe of eligible individuals); and (3) claims/payments (that is, a universe of payments made). We found that the third approach, defining the universe by the claims/payments, was best; PERM was designed to meet the IPERIA requirements of calculating a national Medicaid and CHIP improper payment rate, so having the eligibility reviews tied directly to a paid claim ensures that PERM only reviews those beneficiaries or recipients who have had services paid for by the state Medicaid or CHIP agency. Accordingly, for the PERM eligibility review active universe we propose using the definition at § 431.972(a), and deleting the current PERM eligibility review universe requirements in § 431.974 and § 431.978. The PERM claims component requires state submission of Medicaid and CHIP FFS claims and managed care payments on a quarterly basis; state submission responsibilities are defined under § 431.970. These claims and payments are rigorously reviewed by the federal statistical contractor, and the process has extensive, thorough quality control procedures that have been used for several PERM cycles and have been well-tested.

We believe that this universe definition leverages the claims component of PERM and supports efficient use of resources, as the universe would already be developed on a consistent basis for the PERM claims component. By this proposed change, eligibility reviews using a claims universe would be tied to payments and be more consistent with IPERIA, state burden would be minimized by harmonizing PERM claims and eligibility universe development, and federal and state resources would no longer be spent on eligibility reviews that potentially could not be tied to payments (for example, eligibility reviews conducted on beneficiaries that did not receive any services).

Through our pilot testing, we have also determined that the claims universe does not result in a substantially different rate of case error. However, sampling from this universe did result in a higher proportion of non-MAGI cases because enrollees in such eligibility categories are likely to have higher health care service utilization, and, therefore, have more associated FFS claims. Because PERM is designed to focus on improper payments, we believe it is appropriate to use a sample that focuses on individuals who are linked to the bulk of Medicaid and CHIP payments. However, because eligibility will be reviewed for both FFS claims and managed care capitation payments, MAGI cases will be subject to a PERM eligibility review, primarily through the review of eligibility for individuals who have managed care capitations payments on their behalf, as many states have chosen to enroll individuals in MAGI eligibility categories in managed care. Further, states can choose to focus on further Medicaid and CHIP reviews of MAGI cases in the proposed MEQC pilot reviews they would conduct during their off-year pilots.

While it is possible for a claim to be associated with a negative case, as mentioned previously, the claims universe does not support a negative PERM eligibility case rate. Because IPERIA focuses on payments, the statute does not require determining a negative case rate. The proposed MEQC pilot reviews that states would conduct on off-years would be used to review Medicaid and CHIP negative cases.

15. Inclusion of FFM–D Cases in the PERM Review

As previously noted, § 431.10(c)(1)(i)(A)(*3*) permits state Medicaid agencies to delegate authority to determine eligibility for all or a defined subset of individuals to the Exchange, including Exchanges operated by a state or by HHS. We propose that, in FFM–D states, cases determined by the FFM (referred to as FFM–D cases) could be reviewed if a FFS claim or managed care payment for an individual determined eligible by the FFM is sampled. Although FFM–D states are required to maintain oversight of their Medicaid/CHIP programs per § 435.1200(c)(3), they also enter into an agreement per § 435.1205(b)(2)(i)(A) by which they must accept the determinations of Medicaid/CHIP eligibility based on MAGI made by another insurance affordability program (in this case, the FFM).

Federal regulations permit states to delegate authority for MAGI-based Medicaid and CHIP eligibility determinations to the FFM and require them to accept those determinations. States have an overall responsibility for oversight of all Medicaid and CHIP eligibility determinations, but, with respect to the FFM delegation, they are required to accept FFM determinations without further review or discussion on a case-level basis, making it difficult for states to address improper payments on a case-level basis. Therefore, we propose that case-level errors resulting solely from an FFM determination of MAGI-based eligibility that the state was required to accept be included only in the national improper payment rate, not the state rate. Conversely, we propose that errors resulting from incorrect state action taken on cases determined and transferred from the FFM, or from the state's annual redetermination of cases that were initially determined by the FFM, be included in both state and national improper payment rates. Examples of errors that we propose would be included in both state and national improper payment rates include, but are not limited to: (1) Where a case is initially determined and transferred from the FFM, but the state then fails to enroll an individual in the appropriate eligibility category; and (2) errors resulting from initial determinations made by a state-based Exchange.

We propose revisions to § 431.960(e) and § 431.960(f) to clarify that we would distinguish between cases that are included in a state's, and the national, improper payment rate. Although we are proposing this distinction for improper payment measurement program purposes, this distinction does not preclude the single state agency from exercising appropriate oversight over eligibility determinations to ensure compliance with all federal and state laws, regulations and policies. We also propose revisions to § 431.992(b) to make clear that states would be required to submit PERM corrective actions only for errors included in state improper payment rates.

16. Sample Size

Establishing adequate sample sizes is critical to ensuring that the PERM improper payment rate measurement meets IPERIA statistical requirements. In accordance with IPERIA, PERM is focused on establishing a national improper payment rate and the national improper payment rate must meet the precision level established in OMB Circular A–123, which is a 2.5 percent precision level at a 90 percent confidence interval. As an additional goal, although not required by IPERIA, we have always strived to achieve state level improper payment rates within a 3 percent precision level at a 95 percent confidence interval. However, as discussed in the Regulatory Impact Analysis, we recognize achieving this level of precision in all states poses some challenges and is not always possible.

Previously, state-specific sample sizes were calculated prior to each cycle and the national annual sample size was the aggregate of the state-specific sample sizes. State-specific sample sizes were based on past state PERM improper payment rates. We propose establishing a national annual sample size that would meet IPERIA's precision requirements at the national level, and then distributing the sample across states to maximize precision at the state level, where possible. We also propose that the state-specific sample sizes would be chosen to maximize precision based on state characteristics, including a history of high expenditures and/or past state PERM improper payment rates. We recognize that the precision of past estimates of state-specific improper payment rates has varied. We request public comment on this proposed approach, its benefits, limitations, and any potential alternatives. We believe that, relative to our prior approach, the proposed approach would more effectively measure and reduce national improper payments and would also provide more stable state-specific sample sizes, as the sample size would be less responsive to changes in improper payment rates from cycle to cycle. A more stable state-specific sample size may assist with state level planning. Further, it will allow us to exercise more control over the PERM program's budget by establishing a national sample size. On the other hand, like its predecessor, the proposed approach may not yield improper payment estimates at the state level within a 3 percent precision level at a 95 percent confidence interval for all states (due to underpowered sample size). We will develop specific sampling plans for PERM cycles that occur after publication of the final rule. We will continue to calculate a national improper payment rate within a 2.5 percent precision level at a 90 percent confidence interval as required by IPERIA. Likewise, we will continue to strive to achieve state improper payment rates within a 3 percent precision level at a 95 percent confidence interval precision. In the future, as information improves or new priorities are identified, we may identify additional factors that should be taken into account in developing state-specific sample sizes.

In practice, we anticipate having the ability to vary the number of data processing, medical, and eligibility reviews performed on each of the sampled claims. Under this approach, each sampled claim may not undergo all three types of reviews, which would allow us to more efficiently allocate the types of reviews performed. Conducting more reviews on payments that are likely to have problems gives us better information to implement effective corrective actions, which could assist in reducing improper payments. For example, after eligibility reviews resume, we may determine that there are few eligibility improper payments for clients associated with managed care claims; there thus might be a limited benefit to conducting eligibility reviews on all sampled managed care claims, and we might reduce the number of those reviews. This approach would allow us to optimize PERM program expenditures so we do not waste resources conducting reviews unlikely to provide valuable insight on the causes of improper payments.

We note above that conducting reviews on areas more likely to have problems results in more information to inform corrective actions versus conducting more reviews on areas that are likely to be correct. It is important to note that state corrective actions are not impacted by varying levels of state-specific improper payment rate precision. As we describe later in this proposed rule, states are required to submit corrective action plans that address all improper payments and deficiencies identified.

17. Data Processing, Medical, and Eligibility Improper Payment Definitions

We propose clarifying in § 431.960(b)(1), § 431.960(c)(1), and § 431.960(d)(1) that improper payments are defined as both federal and state improper payments. We believe this change would allow us to cite federal improper payments in circumstances where states make an incorrect eligibility category assignment that would result in the incorrect federal medical assistance percentage (FMAP) being claimed by the state. Previously, improper payments were only cited if the total computable amount—the federal share plus the state share—was incorrect. Under the Affordable Care Act, beneficiaries in the newly eligible adult group receive a higher FMAP rate than other eligibility categories. As a result, incorrect enrollment of an individual in the newly eligible adult category may result in improper federal payments even though the total computable amount may be correct. Although there were eligibility categories that could receive higher FMAP rates previously, the size of the newly eligible adult category makes it critical for us to have the ability to cite federal improper payments to achieve an accurate PERM improper payment rate.

18. Difference Resolution and Appeals Process

Because we propose to use an ERC to conduct the eligibility case reviews, we likewise propose that the ERC conduct the eligibility difference resolution and appeals process, which would mirror how that process is conducted with respect to FFS claims and managed care payments. The difference resolution and appeals process used for the FFS and managed care components of the PERM program is well developed and has allowed us to adequately resolve disagreements between the RC and states. We have revised § 431.998 to include the proposed eligibility changes for the difference resolution and appeals process.

Additionally, in the text currently at § 431.998(d), we propose deleting the statement about CMS recalculating state-specific improper payment rates, upon state request, in the event of any reversed disposition of unresolved claims. We propose that the recalculation be performed whenever there is a reversed disposition; no state request is needed.

19. Corrective Action Plans

Under § 431.992, states are required to submit CAPs to address all improper payments and deficiencies found through the PERM review. We propose that states would continue to submit CAPs that address eligibility improper payments, along with improper payments found through the FFS and managed care components. We propose to revise § 431.992(a) to clarify that states would be required to address all errors included in the state improper payment rate at § 431.960(f)(1).

We propose to revise § 431.992 to provide additional clarification for the PERM CAP process. We propose minor revisions to the regulatory text to reflect the current corrective action process and provide additional state requirements, consistent with the CHIPRA. Proposed revisions include replacing "major tasks" at § 431.992(b)(3)(ii)(A) with "corrective action," to improve clarity. Other proposed clarifications would also be provided at § 431.992(b)(3)(ii)(A) through § 431.992(b)(3)(ii)(E).

We also propose adding language to clarify the state responsibility to evaluate corrective actions from the previous PERM cycle at § 431.992(b)(4), and a requirement for states, annually and when requested by CMS, to update us on the status of corrective actions. We propose requesting updates on state corrective action implementation progress on an annual basis, a frequency that would enable us fully monitor corrective actions and ensure that states are continually evaluating the effectiveness of their corrective actions.

Additionally, we propose to add language in § 431.992 to specify further CAP requirements should a state's PERM eligibility improper payment rate exceed the allowable threshold of 3 percent per section 1903(u) of the Act for consecutive PERM years. This proposal only pertains to a state's additional CAP requirements related to the PERM eligibility improper payment rate, and does not extend to the FFS and managed care components. As the allowable threshold for eligibility is set by section 1903(u) of the Act, this will not change from year to year. The improper payment rate targets for FFS and managed care are not constant, therefore, it is not judicious to hold states accountable to meet a target that is variable.

We propose to require states whose eligibility improper payment rates exceed the 3 percent threshold for consecutive PERM years to provide status updates on all corrective actions on a more frequent basis, as well as include more details surrounding the state's implementation and evaluation of all corrective actions, than would be required for those states which did not have eligibility improper payment rates over the 3 percent threshold for consecutive PERM years. As noted above, we anticipate typically requesting updates on corrective actions on an annual basis, however, for those states with consecutive PERM eligibility improper payment rates above the allowable threshold, we propose to require updates every other month. Such states would also be required to submit information about any setbacks and provide alternate corrective actions or manual workarounds, in the event that their original corrective actions are unattainable or no longer feasible. This would ensure states have additional plans in place, if the original corrective action cannot be implemented as planned. Also, states would be required to submit actual examples demonstrating that the corrective actions have led to improvements in operations, and explanations for how these improvements are efficacious and will assist the state to reduce both the number of errors cited and the state's next PERM eligibility improper payment rate. Moreover, we propose that states be required to submit an overall summary that clearly demonstrates how the corrective actions planned and implemented would provide the state with the ability to meet the 3 percent threshold upon their next PERM eligibility improper payment rate measurement.

20. PERM Disallowances

As previously stated regarding MEQC Disallowances, we are proposing to require states to use PERM to meet section 1903(u) of the Act requirements in their PERM years, and to no longer require the proposed MEQC pilot program to satisfy the requirements of section 1903(u) of the Act. We propose to require states to use PERM to meet section 1903(u) of the Act requirements, as this approach has been supported by the CHIPRA through its data substitution authorization between the PERM and MEQC programs. Moreover, requiring the PERM program to satisfy IPERIA requirements and requiring a separate program to satisfy the erroneous excess payment measurement and payment reduction/disallowance requirements of section 1903(u) of the Act, when PERM is capable of meeting the requirements of both, would be contrary to the CHIPRA's requirement to harmonize PERM and MEQC. Therefore, based on the ability of the PERM program to meet both the requirements of section 1903(u) of the Act and IPERIA, we propose that in a state's PERM year, a state's PERM eligibility improper payment rate be used to satisfy both IPERIA's improper payment requirements and 1903(u) the Act's erroneous excess payments and payment reduction/disallowance requirements.

If a state's PERM eligibility improper payment rate is above the 3 percent allowable threshold per section 1903(u) of the Act, it would be subjected to potential payment reductions and disallowances. However, if the state has taken the action it believed was needed to meet the threshold, failed to achieve that level, the state may be eligible for a good faith waiver as outlined in § 431.1010. Essential elements of a state's showing of a good faith effort include the state's participation in the MEQC pilot program in accordance with subpart P (§ 431.800 through § 431.820) and implementation of PERM CAPs in accordance with § 431.992.

Absent CMS's approval, a state's failure to comply with both the MEQC pilot program requirements and PERM CAP requirements, would be considered a state's failure to demonstrate a good faith effort to reduce its eligibility improper payment rate. Again, absent our approval, we would not grant a good faith waiver for any state that either does not comply with the MEQC pilot program requirements or does not implement a PERM corrective action plan. We also propose that the requirements under section 1903(u) of the Act would not become effective until a state's second PERM eligibility improper payment rate measurement has occurred, as an earlier effective date would not give states a chance to demonstrate, if needed, a good faith effort.

Under this proposed regulation, we would reduce a state's FFP for medical assistance by the percentage by which the lower limit of the state's eligibility improper payment rate exceeds the 3 percent threshold should a state fail to demonstrate a good faith effort. We propose to use the lower limit of the improper payment rate per previous MEQC guidance issued by us prior to the implementation of MEQC pilots in 1993. We believe that utilizing the lower limit of the error rate for disallowance purposes will assist in ensuring there is reliable evidence that a state's error rate exceeds the 3 percent threshold. This approach addresses the varying levels of state-specific improper payment rate precision as discussed in the sample size section above. Therefore, we propose to add § 431.1010, which establishes rules and procedures for payment reductions and disallowances of federal financial participation (FFP) in erroneous medical assistance payments due to eligibility improper payments, as detected through the PERM program. Federal medical assistance funds include all service-based fee-for-service, managed care, and aggregate payments which are included in the PERM universe. Exclusions from the federal medical assistance funds for disallowance purposes include non-service related costs (for example, administrative, staffing, contractors, systems) as well as certain payments for services not provided to individual beneficiaries such as Disproportionate Share Hospital (DSH) payments to facilities, grants to State agencies or local health departments, and cost-based reconciliations to non-profit providers and Federally-Qualified Health Centers (FQHCs). We may adjust this definition if expenditures included in the PERM universe are adjusted, as needed, to meet program needs.

III. Collection of Information

Under the Paperwork Reduction Act of 1995 (PRA), we are required to publish a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval.

To fairly evaluate whether an information collection should be approved by OMB, PRA section 3506(c)(2)(A) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our burden estimates.
- The quality, utility, and clarity of the information to be collected.
- Our effort to minimize the information collection burden on the affected public, including the use of automated collection techniques.

The estimates in this collection of information were derived from feedback received from states during the PERM cycle. We are soliciting public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements (ICRs).

Wages

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2014 National Industry-Specific Occupational Employment and Wage Estimates for State Government (NAICS 999200) (*http://www.bls.gov/oes/current/naics4_999200.htm#13-0000*). In this regard, Table 1 presents the mean hourly wage, the cost of fringe benefits (calculated at 100 percent of salary), and the adjusted hourly wage.

TABLE 1—SUMMARY OF 2014 BLS STATE GOVERNMENT WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefit ($/hr)	Adjusted hourly wage ($/hr)
Claims Adjusters, Appraisers, Examiners, and Investigators	13–1031	$27.60	$27.60	$55.20
Medical Secretaries	43–6013	16.50	16.50	33.00

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, there is no practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

A. ICRs Regarding Review Procedures (§ 431.812)

Section 431.812 would require states to conduct one MEQC pilot during the 2 years between their designated PERM years. Revisions to § 431.812, propose that states must use the MEQC pilots to perform both active and negative case reviews, while providing states with some flexibility surrounding their active case review pilot. States would review a minimum total of 400 Medicaid and CHIP active cases, with at least 200 of the active cases being Medicaid cases. States would have the flexibility to determine the precise distribution of active cases (for example, states could sample 300 Medicaid cases and 100 CHIP cases), and states would describe the active sample distribution in the MEQC pilot planning document at § 431.814. States would also, at a minimum, be required to review 200 Medicaid and 200 CHIP negative cases. Currently, under the PERM program, states are required to conduct approximately 200 negative case reviews for each the Medicaid program and CHIP. Therefore, a total minimum negative sample size of 400 (200 for each program) would be reviewed under the MEQC pilots.

Section 431.812 aligns with § 431.816 and outlines the case review completion deadlines and submittal of reports. Additionally, § 431.820 is also considered to be a part of a state's MEQC pilot reporting. Therefore, burden estimates are combined for the case reviews, the reporting of findings, including corrective actions. The time, effort and costs listed in this section will be identical to the sections where § 431.816 and § 431.820 are described, but should not be considered additional or separate costs.

The ongoing burden associated with the requirements under § 431.812 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to a maximum of 34 total respondents each PERM off-year) to perform the required number of eligibility case reviews as mentioned above, and report on their findings and corrective actions.

We estimate that it will take 1,200 hours annually per state program to report on all case review findings (900 hours) and corrective actions (300 hours). This estimate assumes that states spend approximately 100 hours a month on the related activities (100 hours × 12 months = 1,200 hours) during the State's MEQC reporting year. The total estimated annual burden is 40,800 hours (1,200 hours × 34 respondents), at a total estimated cost per respondent of $66,240 (1,200 hours × ($55.20/hour)) and a total estimated cost of $2,252,160 (($66,240 per respondent) × 34 respondents) for all respondents. The preceding requirements and burden estimates will be submitted to OMB as a revision to the information collection request currently approved under control number 0938–0147.

B. ICRs Regarding Pilot Planning Document (§ 431.814)

Revised § 431.814 requires states to submit a MEQC Pilot Planning Document. The Pilot Planning Document must be approved by us as outlined in § 431.814 of this proposed rule and is critical to ensuring that the state will conduct a MEQC pilot that complies with our guidance. The Pilot Planning Document submitted by the state would include details surrounding how the state will perform both its active and negative case reviews.

The ongoing burden associated with the requirements under § 431.814 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP programs for 17 states equates to a maximum of 34 total respondents each PERM off-year) to develop, submit and gain CMS approval of its MEQC Pilot Planning Document.

We estimate that it will take 48 hours per MEQC pilot per state program to submit its Pilot Planning Document and gain approval under § 431.814. We have based the estimated 48 hours off of the pilot proposal process currently utilized in the FY2014–2017 Eligibility Review pilots, and have estimated the burden associated accordingly. The total estimated annual burden across all respondents is 1,632 hours ((48 hours/respondent) × 34 respondents). The total estimated cost per respondent is $2,649.60 (48 hours × ($55.20/hour)) and the total estimated annual cost across all respondents is $90,086.40 (($2,649.60/respondent) × 34 respondents). As the MEQC program is currently suspended, and will be operationally different under this proposed rule, this estimate is not based on real time data. Once real time data is available, we will solicit information from the states and update our burden estimates accordingly.

The preceding requirements and burden estimates will be submitted to OMB as a revision to the information collection currently approved under control number 0938–0146.

C. ICRs Regarding Case Review Completion Deadlines and Submittal of Reports (§ 431.816)

Revised § 431.816 provides clarification surrounding the case review completion deadlines and submittal of reports. States would be required to report on all sampled cases in a CMS-specified format by August 1 following the end of the MEQC review period.

As mentioned above, § 431.816 aligns with sections § 431.812 and § 431.820, thus, the burden estimates are identical for these sections and should not be thought of as separate estimates or a duplication of effort. The ongoing burden associated with the requirements under § 431.816 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to maximum 34 total respondents each PERM off-year) to complete the required number of eligibility case reviews, and report on their findings. Refer back to section A. *ICRs Regarding Review Procedures (§ 431.812),* for the expanded burden estimate.

The preceding requirements and burden estimates will be submitted to OMB as a revision to the information collection currently approved under control number 0938–0147.

D. ICRs Regarding Corrective Action Under the MEQC Program (§ 431.820)

Under the current MEQC program, states are required to conduct corrective actions on all case errors, including technical deficiencies, found through the review. Corrective actions are critical to ensuring that states continually improve and refine their eligibility processes. Therefore, revisions to § 431.820 require states to implement corrective actions on any errors or deficiencies identified through the revised MEQC program as outlined under § 431.820.

We propose that states report their corrective actions to us by August 1 following completion of the MEQC review period. The report would also include updates on previous corrective actions, including information regarding the status of corrective action implementation and an evaluation of those corrective actions.

The ongoing burden associated with the requirements under § 431.820 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to maximum 34 total respondents each PERM off-year) to develop and report its corrective actions in response to its MEQC pilot program findings. Refer back to section A. *ICRs Regarding Review Procedures (§ 431.812),* for the expanded burden estimate.

The preceding requirements and burden estimates will be submitted to OMB as a revision to the information collection currently approved under control number 0938–0147.

E. ICRs Regarding Information Submission and Systems Access Requirements (§ 431.970)

Currently, the PERM claims component requires state submission of Medicaid and CHIP FFS claims and managed care payments on a quarterly basis; and provider submission of medical records; state and provider submission responsibilities are defined under § 431.970. These claims and payments are rigorously reviewed by the federal statistical contractor. We are proposing to utilize this same claims universe to complete the PERM eligibility component. Previously, states had to pull a separate case universe for the PERM eligibility component. With this proposed change, states would only be required to submit one universe to satisfy all components of PERM.

Additionally, states are required to collect and submit (with an estimate of 4 submissions) state policies. With this proposed change, states will still be required to collect and submit state policies surrounding FFS and managed care, but would now also have to submit all state eligibility policies. There would be an initial submission and quarterly updates. There are no proposed changes for the provider submission of medical records.

The ongoing burden associated with the requirements under § 431.970 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to maximum 34 total respondents each PERM year) to submit its claims universe, and collect and submit state policies, and the time and effort it would take providers to furnish medical record documentation.

We estimate that it will take 1,350 hours annually per state program to develop and submit its claims universe and state policies. The total estimated hours is broken down between the FFS, managed care, and eligibility components and is estimated at 900 hours for universe development and submission, and 450 hours for policy collection and submission. Per component it is estimated at 1,150 FFS hours, 100 managed care hours, 100 eligibility hours for a total of 45,900 annual hours (1,350 hours × 34 respondents). The total estimated annual cost per respondent is $74,520 (1,350 hours × ($55.20/hour), and the total estimated annual cost across all respondents is $2,533,680 (($74,520/respondent) × 34 respondents).

However, as a federal contractor has not previously conducted the eligibility component of PERM, the hours assessed related to the state burden associated with the revised eligibility component are not based on real time data, but rather based off information solicited from the states. The information received was from those states who participated in the PERM model eligibility pilots which were conducted by a federal contractor, but on a much smaller scale than that of PERM.

The preceding requirements and burden estimates will be submitted to OMB as a revision to the information collection currently approved under control numbers 0938–0974, 0938–0994, and 0938–1012.

We estimate that it will take 2,824 hours annually per program for providers to furnish medical record documentation to substantiate claim submission. These estimates are based on the average number of medical reviews conducted per PERM cycle and the average amount of time it takes for providers to comply with the medical record request. These estimates are for FFS claims only, as medical review is only completed on sampled FFS claims. The total estimated cost for annual submission is $93,192 (2,824 hours/program) × ($16.50/hour).

F. ICRs Regarding Corrective Action Plan Under the PERM Program (§ 431.992)

Currently, under § 431.992, states are required to submit corrective action plans to address all improper payments and deficiencies found through the PERM review. Proposed revisions to § 431.992(a) clarify that states would be required to address all improper payments and deficiencies included in the state improper payment rate as defined at § 431.960(f)(1). Additional language was also added to § 431.992 to clarify the state responsibility to evaluate corrective actions from the previous PERM cycle at § 431.992(b)(4).

The ongoing burden associated with the requirements under § 431.992 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to maximum 34 total respondents per PERM cycle) to submit its corrective action plan.

We estimate that it will take 750 hours (250 hours for FFS, 250 hours for managed care and an additional 250 hours for eligibility), per PERM cycle per state program to submit its corrective action plan for a total estimated annual burden of 25,500 hours ((750 hours/respondent) × 34 respondents). We estimate the total cost per respondent to be $41,400 (750 hours × ($55.20/hour)). The total estimated cost for all respondents is $1,407,600 (($41,400/respondent) × 34 respondents).

However, as a federal contractor has not previously conducted the eligibility component of PERM, the hours assessed related to the state burden associated with the revised eligibility component are not based on real time data, but rather based off information solicited from the states. The information received was from those states who participated in the PERM model eligibility pilots which were conducted by a federal contractor, but on a much smaller scale than that of PERM.

The preceding requirements and burden estimates will be submitted to OMB as part of revisions to the information collections currently approved under control numbers 0938–0974, 0938–0994 and 0938–1012. Not to be confused with the burden set outlined above, the revised PERM PRA packages' total burden would amount to: 34 annual respondents, 34 annual responses, and 750 hours per corrective action plan.

G. ICRs Regarding Difference Resolution and Appeal Process (§ 431.998)

Currently, the difference resolution and appeals process used for the FFS and managed care components of the PERM program is well developed and has allowed us to adequately resolve disagreements between the RC and states. Revisions to § 431.998 now include the proposed eligibility changes for the difference resolution and appeals process. Because we propose to use an ERC to conduct the eligibility case reviews, we likewise propose that the ERC conduct the eligibility difference resolution and appeals process, which would mirror how that process is conducted with respect to FFS claims and managed care payments.

The ongoing burden associated with the requirements under § 431.998 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to maximum 34 total respondents per PERM cycle) to review PERM findings and inform the federal contractor(s) of any additional information and/or dispute requests.

We estimate that it will take 1625 hours (500 hours for FFS, 475 hours for managed care and an additional 650 hours for eligibility) per PERM cycle per state program to review PERM findings and inform federal contractor(s) of any additional information or dispute requests for FFS, managed care, and eligibility components total estimated annual burden of 55,250 hours ((1,625 hours/respondent) × 34 respondents). We estimate the total cost per respondent to be $89,700 (1,625 hours × ($55.20/hour)). The total estimated cost for all respondents is $3,049,800 (($89,700/respondent) × 34 respondents).

The preceding requirements and burden estimates will be submitted to OMB as revisions to the information collections currently approved under control numbers 0938–0974, 0938–0994, and 0938–1012. Not to be confused with the burden set outlined above, the revised PERM PRA packages' total burden would amount to: 34 Annual respondents, 34 annual responses, and 1,625 hours per PERM cycle.

TABLE 2—SUMMARY OF ANNUAL INFORMATION COLLECTION BURDEN ESTIMATES

Regulation section(s)	OCN	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Labor cost of reporting ($)	Total cost ($)
§ 431.812	0938–0147	34	34	1,200	40,800	$66,240.00	$2,252,160.00
§ 431.814	0938–0146	34	48	1,632	2,649.60	90,086.40	
§ 431.816	0938–0147	34	*34	*1,200	*40,800	*66,240.00	*2,252,160.00
§ 431.820	0938–0147	34	*34	*1,200	*40,800	*66,240.00	*2,252,160.00
§ 431.970	0938–0974; 0938–0994; 0938–1012.	34	34	1,350	**51,548	**167,712.00	**2,626,872.00
§ 431.992	0938–0974; 0938–0994; 0938–1012.	34	34	750	25,500	41,400.00	1,407,600.00
§ 431.998	0938–0974; 0938–0994; 0938–1012.	34	34	1,625	55,250	89,700.00	3,049,800.00
Total	....	34	170	....	174,330	367,701.60	9,426,518.40

* Not included in totals, as these represent the combined estimated hours/cost for 3 sections as mentioned above. These numbers should only be counted once.

** The total annual hours and cost for provider submissions are included in these numbers. Due to the variability in the number of providers providing responses these numbers were not included in the total hours.

Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit CMS' Web site at *www.cms.hhs.gov/PaperworkReductionActof1995,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule and identify the rule (CMS–6068–P) the ICR's CFR citation, CMS ID number, and OMB control number.

ICR-related comments are due August 22, 2016.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule would make small changes to the administration of the existing MEQC and PERM programs. It would therefore have a relatively small economic impact; as a result, this proposed rule does not reach the $100 million threshold and thus is neither an "economically significant" rule under E.O. 12866, nor a "major rule" under the Congressional Review Act.

The Regulatory Flexibility Act requires agencies to analyze options for regulatory relief of small entities, and to prepare an Initial Regulatory Flexibility Analysis (IRFA), for proposed rules that would have a "significant economic impact on a substantial number of small entities." For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. These entities may incur costs due to collecting and submitting medical records to support medical reviews, but we estimate that these costs would not be significantly changed under the proposed rule. Therefore, we are not preparing an IRFA because we have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. For the preceding reasons, we are not preparing an analysis for section 1102(b) of the Act because we have determined that this proposed rule would not have a direct economic impact on the operations of a substantial number of small rural hospitals.

Please note, a state will be reviewed only once, per program, every 3 years and it is unlikely for a provider to be selected more than once per program to provide supporting documentation.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. For the preceding reasons, we have determined that this proposed rule does not mandate any spending that would approach the $146 million threshold for state, local, or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This proposed rule would shift minor costs and burden for conducting PERM eligibility reviews from states to the federal government and its contractors. However, these reductions would be largely offset by federal government savings in reduced payments to states in matching funds. The net effect of this proposed regulation on state or local governments is minor.

PERM calculates national level improper payment estimates as required by IPERIA as well as state level improper payment estimates. The impacts of this rule are based on the proposed approach to continue meeting national level precision requirements and striving to obtain a state level precision goal. In the most recent PERM cycle, 13,392 Medicaid FFS claims; 9,416 CHIP FFS claims; 3,360 Medicaid managed care payments; and 2,880 CHIP managed care payments are being sampled for review. If we were to alternatively set state sample sizes to guarantee increased state level improper payment rate precision, we would need to review a much higher number of claims in a cycle.

For example, to guarantee state level improper payment rate precision within 3 percentage points we estimate, based on previous cycle sample data, that we would need to review nearly 100,000 Medicaid FFS claims for the cycle (in comparison to the currently reviewed 13,392). Under alternative state level precision goals, for example, 3 percentage points for the top three expenditure states and 5 percentage points in the remaining 14 states in a PERM cycle, we estimate, based on previous sampling data, that PERM would need to review close to 40,000 Medicaid FFS claims for the cycle (in comparison to the currently reviewed 13,392). While such approaches would ensure state level improper payment rate precision, they would also yield operational, budgetary, feasibility, and state burden concerns.

Although we do not expect in the final rulemaking to commit to a particular sample size in future years, we welcome public comments that may inform the general approach we take to sampling and factors that we should consider in establishing state sample sizes.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the OMB.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 457

Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

■ 2. Sections 431.800 and the undesignated center heading preceding § 431.800 are revised to read as follows:

Medicaid Eligibility Quality Control (MEQC) Program

§ 431.800 Basis and scope.

This subpart establishes State requirements for the Medicaid Eligibility Quality Control (MEQC) Program designed to reduce erroneous expenditures by monitoring eligibility determinations and a claims processing assessment that monitors claims processing operations. MEQC will work in conjunction with the Payment Error Rate Measurement (PERM) Program established in subpart Q of this part. In years in which the State is required to participate in PERM, as stated as in subpart Q, States will only participate in the PERM program and will not be required to conduct a MEQC pilot. In the 2 years between PERM cycles, states are required to conduct a MEQC pilot, as set forth in this subpart.

■ 3. Section 431.804 is revised to read as follows:

§ 431.804 Definitions.

As used in this subpart—

Active case means an individual determined to be currently authorized as eligible for Medicaid or CHIP by the State.

Corrective action means action(s) to be taken by the State to reduce major error causes, trends in errors or other vulnerabilities for the purpose of reducing improper payments in Medicaid and CHIP.

Deficiency means a finding in which a claim or payment had a medical, data processing, and/or eligibility error that did not result in Federal and/or State improper payment.

Eligibility means meeting the State's categorical and financial criteria for receipt of benefits under the Medicaid or CHIP programs.

Eligibility error is an error resulting from the States' improper application of Federal rules and the State's documented policies and procedures that causes a beneficiary to be determined eligible when he or she is ineligible for Medicaid or CHIP, causes a beneficiary to be determined eligible for the incorrect type of assistance, causes applications for Medicaid or CHIP to be improperly denied by the State, or causes existing cases to be improperly terminated from Medicaid or CHIP by the State. An eligibility error may also be caused when a redetermination did not occur timely or a required element of the eligibility determination process (for example income) cannot be verified as being performed/completed by the state.

Medicaid Eligibility Quality Control (MEQC) means a program designed to reduce erroneous expenditures by monitoring eligibility determinations and work in conjunction with the PERM program established in subpart Q of this part.

MEQC Pilot refers to the process used to implement the MEQC Program.

MEQC review period is the 12-month timespan from which the State will sample and review cases.

Negative case means an individual denied or terminated eligibility for Medicaid or CHIP by the State.

Off-years are the scheduled 2-year period of time between a States' designated PERM years.

Payment Error Rate Measurement (PERM) program means the program set forth at subpart Q utilized to calculate a national improper payment rate.

PERM year is the scheduled and designated year for a State to participate in and be measured by the PERM program set forth at subpart Q of this part.

■ 4. Section 431.806 is revised to read as follows:

§ 431.806 State requirements.

(a) *General requirements.* (1) In a State's PERM year, the PERM measurement will meet the requirements of section 1903(u) of the Act.

(2) In the 2 years between each State's PERM year, States are required to conduct one MEQC pilot, which will span parts of both off years.

(i) The MEQC pilot review period will span 12-months of a calendar year, beginning the January 1 following the end of the State's PERM year through December 31.

(ii) The MEQC pilot planning document described in § 431.814 is due no later than the first November 1 following the end of the State's PERM year.

(iii) States must submit their MEQC pilot findings and their plan for corrective action(s) by the August 1 following the end of their MEQC pilot review period.

(b) *PERM measurement.* Requirements for the State PERM review process are set forth in subpart Q.

(c) *MEQC pilots.* MEQC pilot requirements are specified in §§ 431.812 through 431.820.

(d) *Claims processing assessment system.* Except in a State that has an approved Medicaid Management Information System (MMIS) under subpart C of part 433 of this subchapter, a State plan must provide for operating a Medicaid quality control claims processing assessment system that meets the requirements of §§ 431.830 through 431.836.

■ 5. The undesignated center heading preceding § 431.810 is removed and § 431.810 is revised to read as follows:

§ 431.810 Basic elements of the Medicaid Eligibility Quality Control (MEQC) Program.

(a) *General requirements.* The State must operate the MEQC pilot in accordance with this section and §§ 431.812 through 431.820 as well as other instructions established by CMS.

(b) *Review requirements.* The State must conduct reviews for the MEQC pilot in accordance with the requirements specified in § 431.812 and other instructions established by CMS.

(c) *Pilot planning requirements.* The State must develop a MEQC pilot planning proposal in accordance with requirements specified in § 431.814 and other instructions established by CMS.

(d) *Reporting requirements.* The State must report the finding of the MEQC pilots in accordance with the requirements specified in § 431.816 and other instructions established by CMS.

(e) *Corrective action requirements.* The State must conduct corrective actions based on the findings of the MEQC pilots in accordance with the requirements specified in § 431.820 and other instructions established by CMS.

■ 6. Section 431.812 is revised to read as follows:

§ 431.812 Review procedures.

(a) *General requirements.* Each state is required to conduct a MEQC pilot during the 2 years between required PERM cycles in accordance with the approved pilot planning document specified in § 431.814, as well as other instructions established by CMS. The agency and personnel responsible for the development, direction, implementation, and evaluation of the MEQC reviews and associated activities, must be functionally and physically separate from the State agencies and personnel that are responsible for Medicaid and CHIP policy and operations, including eligibility determinations.

(b) *Active case reviews.* (1) The State must review all active cases selected from the universe of cases, as established in the state's approved MEQC pilot planning document, under § 431.814 to determine if the cases were eligible for services, as well as to identify deficiencies in processing subject to corrective actions.

(2) The State must select and review, at a minimum, 400 active cases in total from the Medicaid and CHIP universe.

(i) The State must review at least 200 Medicaid cases.

(ii) The State will identify in the pilot planning document at § 431.814 the sample size per program.

(iii) A State may sample more than 400 cases.

(3) The State may propose to focus the active case reviews on recent changes to eligibility policies and processes, areas where the state suspects vulnerabilities, or proven error prone areas.

(i) The State must propose its active case review approach, unless otherwise directed by CMS, in the pilot planning document described at § 431.814 or perform a comprehensive review.

(ii) The State must follow CMS direction for its active case reviews, when the State has a PERM eligibility improper payment rate that exceeds the 3 percent national standard for two consecutive PERM cycles. CMS guidance will be provided to any state meeting this criteria.

(c) *Negative case reviews.* (1) The State must review negative cases selected from the State's universe of cases, as established in the State's approved MEQC pilot planning document under § 431.814, that are denied or terminated in the review month to determine if the denial, or termination was correct as well as to identify deficiencies in processing subject to corrective actions.

(2) The State must review, at a minimum, 200 negative cases from Medicaid and 200 negative cases from CHIP.

(i) A states may sample more than 200 cases from Medicaid and/or more than 200 cases from CHIP.

(ii) [Reserved]

(d) *Error definition.* (1) An active case error is an error resulting from the State's improper application of Federal rules and the State's documented policies and procedures that causes a beneficiary to be determined eligible when he or she is ineligible for Medicaid or CHIP, causes a beneficiary to be determined eligible for the incorrect type of assistance, or when a determination did not occur timely or cannot be verified.

(2) Negative case errors are errors, based on the State's documented policies and procedures, resulting from either of the following:

(i) Applications for Medicaid or CHIP that are improperly denied by the State.

(ii) Existing cases that are improperly terminated from Medicaid or CHIP by the State.

(e) *Active case payment reviews.* In accordance with instructions established by CMS, States must also conduct payment reviews to identify payments for active case errors, as well as identify the individual's understated or overstated liability, and report payment findings as specified in § 431.816.

■ 7. Section 431.814 is revised to read as follows:

§ 431.814 Pilot planning document.

(a) *Plan approval.* For each MEQC pilot, the state must submit a MEQC pilot planning document that meets the requirements of this section to CMS for approval by the first November 1 following the end of the State's PERM year. The State must receive approval for a plan before the plan can be implemented.

(b) *Plan requirements.* The State must have an approved pilot planning document in effect for each MEQC pilot that must be in accordance with instructions established by CMS and that includes, at a minimum, the following for—

(1) *Active case reviews.*

(i) Focus of the active case reviews in accordance with § 431.812(b)(3).

(ii) Universe development process.

(iii) Sample size per program.

(iv) Sample selection procedure.

(v) Case review process.

(2) *Negative case reviews.*

(i) Universe development process.

(ii) Sample size per program.

(iii) Sample selection procedure.

(iv) Case review process.

■ 8. Section 431.816 is revised to read as follows:

§ 431.816 Case review completion deadlines and submittal of reports.

(a) The State must complete case reviews and submit reports of findings to CMS as specified in paragraph (b) of this section in the form and at the time specified by CMS.

(b) In addition to the reporting requirements specified in § 431.814 relating to the MEQC pilot planning document, the State must complete case reviews and submit reports of findings to CMS in accordance with paragraphs (b)(1) and (2) of this section.

(1) For all active and negative cases reviewed, the State must submit a detailed case-level report in a format provided by CMS.

(2) All case-level findings will be due by August 1 following the end of the MEQC review period.

■ 9. Section 431.818 is revised to read as follows:

§ 431.818 Access to records.

The State, upon written request, must submit to the HHS staff, or other designated entity, all records, including complete local agency eligibility case files or legible copies and all other documents pertaining to its MEQC reviews to which the State has access, including information available under part 435, subpart I of this chapter.

■ 10. Section 431.820 is revised to read as follows:

§ 431.820 Corrective action under the MEQC program.

The state must—

(a) Take action to correct any active or negative case errors, including deficiencies, found in the MEQC pilot sampled cases in accordance with instructions established by CMS;

(b) By the August 1 following the MEQC review period, submit to CMS a report that—

(1) Identifies the root cause and any trends found in the case review findings.

(2) Offers corrective actions for each unique error and deficiency finding based on the analysis provided in paragraph (b)(1) of this section.

(c) In the corrective action report, the state must provide updates on corrective actions reported for the previous MEQC pilot.

§ 431.822 [Removed]

■ 11. Section 431.822 is removed.

§§ 431.861–431.865 [Removed]

■ 12. The undesignated center heading "Federal Financial Participation" and §§ 431.861 through 431.865 are removed.

■ 13. Section 431.950 is revised to read as follows:

§ 431.950 Purpose.

This subpart requires States and providers to submit information and provide support to Federal contractors as necessary to enable the Secretary to produce national improper payment estimates for Medicaid and the Children's Health Insurance Program (CHIP).

■ 14. Section 431.958 is amended by—

■ a. Removing the definitions of "Active case", "Active fraud investigation", and "Agency".

■ b. Revising the definition of "Annual sample size".

■ c. Adding a definition in alphabetical order for "Appeals",

■ d. Removing the definitions of "Application", "Case", "Case error rate", and "Case record".

■ e. Adding definitions in alphabetical order for "Corrective action", "Deficiency", "Difference resolution", "Disallowance", "Eligibility Review Contractor (ERC)", "Error", "Federal Contractor", "Federally Facilitated Marketplace (FFM)", "Federally Facilitated Marketplace-Determination (FFM–D)", "Federal financial participation", "Finding", and "Improper payment rate".

■ f. Removing the definition of "Last action".

■ g. Adding a definition in alphabetical order for "Lower limit".

■ h. Removing the definitions of "Negative case", "Payment error rate", and "Payment review".

■ i. Adding definitions in alphabetical order for "PERM Review Period" and "Recoveries",

■ j. Adding a definition in alphabetical order for "Review Contractor (RC)".

■ k. Removing the definitions of "Review cycle" and "Review month".

■ l. Revising the definition of "Review year".

■ m. Removing the definitions of "Sample month" and "State agency".

■ n. Adding a definition in alphabetical order for "State eligibility system".

■ o. Revising the definition of "State error".

■ p. Adding definitions in alphabetical order for "State payment system", "State-specific sample size", and "Statistical Contractor (SC)."

■ q. Removing the definition of "Undetermined".

The additions and revisions read as follows:

§ 431.958 Definitions and use of terms.

* * * * *

Annual sample size means the number of fee-for-service claims, managed care payments, or eligibility cases that will be sampled for review in a given PERM cycle

Appeals means a process that allows states to dispute the PERM Review Contractor and Eligibility Review Contractor error findings with CMS after the difference resolution process has been exhausted.

* * * * *

Corrective action means actions to be taken by the state to reduce major error causes, trends in errors, or other vulnerabilities for the purpose of reducing improper payments in Medicaid and CHIP.

* * * * *

Deficiency means a finding in which a claim or payment had a medical, data processing, and/or eligibility error that did not result in federal and/or state improper payment.

Difference resolution means a process that allows states to dispute the PERM Review Contractor and Eligibility Review Contractor error findings directly with the contractor.

Disallowance means the percentage of Federal Medicaid funds States are required to return to CMS in accordance with section 1903(u) of the Act.

* * * * *

Eligibility Review Contractor (ERC) means the CMS contractor responsible for conducting state eligibility reviews for PERM.

Error means any claim or payment where federal and/or state dollars were paid improperly based on medical, data processing, and/or eligibility reviews.

* * * * *

Federal Contractor means the ERC, RC, or SC which support CMS in executing the requirements of the PERM program.

Federally Facilitated Marketplace (FFM) means the health insurance exchange established by the Federal government with responsibilities that include making Medicaid and CHIP determinations for states that delegate authority to the FFM.

Federally Facilitated Marketplace—Determination (FFM–D) means cases determined by the FFM in states that have delegated the authority to make Medicaid/CHIP eligibility determinations to the FFM.

Federal financial participation means the Federal Government's share of a State's expenditures under the Medicaid program and CHIP.

Finding means errors and/or deficiencies identified through the medical, data processing, and eligibility reviews.

Improper payment rate means an annual estimate of improper payments made under Medicaid and CHIP equal to the sum of the overpayments and underpayments in the sample, that is, the absolute value of such payments, expressed as a percentage of total payments made in the sample.

Lower limit means the lower bound of the 95-percent confidence interval for a state's eligibility improper payment rate.

* * * * *

PERM review period means the timeframe in which claims and eligibility are reviewed for national annual improper payment rate calculation purposes, July through June.

* * * * *

Recoveries mean those monies that states are responsible for payment back to CMS based on the identification of Federal improper payments.

Review Contractor (RC) means the CMS contractor responsible for conducting state data processing and medical record reviews for PERM.

Review year means the year being analyzed for improper payments under PERM.

* * * * *

State eligibility system means any system, within the state or with a state-delegated contractor, that is used by the state to determine Medicaid and/or CHIP eligibility and/or that maintains documentation related to Medicaid and/or CHIP eligibility determinations.

State error includes, but is not limited to, data processing errors and eligibility errors as described in § 431.960(b) and (d), as determined in accordance with documented State and Federal policies State errors do not include the errors described in paragraph § 431.960(e)(2).

State payment system means any system within the state or with a state-delegated contractor that is used to adjudicate and pay Medicaid and/or CHIP FFS claims and/or managed care payments.

State-specific sample size means the sample size determined by CMS that is required from each individual States to support national improper payment rate precision requirements.

Statistical Contractor (SC) means the contractor responsible for collecting and sampling fee-for-service claims and managed care capitation payment data as well as calculating state and national improper payment rates.

* * * * *

■ 15. Section 431.960 is revised to read as follows:

§ 431.960 Types of payment errors.

(a) *General rule.* Errors identified for the Medicaid and CHIP improper payments measurement under the Improper Payments Information Act of 2002 must affect payment under applicable Federal policy or State policy or both.

(b) *Data processing errors.* (1) A data processing error is an error resulting in an overpayment or underpayment that is determined from a review of the claim and other information available in the State's Medicaid Management Information System, related systems, or outside sources of provider verification resulting in Federal and/or State improper payments.

(2) The difference in payment between what the State paid (as adjusted within improper payment measurement guidelines) and what the State should have paid, in accordance with federal and state documented policies, is the dollar measure of the payment error.

(3) Data processing errors include, but are not limited to the following:

(i) Payment for duplicate items.

(ii) Payment for non-covered services.

(iii) Payment for fee-for-service claims for managed care services.

(iv) Payment for services that should have been paid by a third party but were inappropriately paid by Medicaid or CHIP.

(v) Pricing errors.

(vi) Logic edit errors.

(vii) Data entry errors.

(viii) Managed care rate cell errors.

(ix) Managed care payment errors.

(c) *Medical review errors.* (1) A medical review error is an error resulting in an overpayment or underpayment that is determined from a review of the provider's medical record or other documentation supporting the service(s) claimed, Code of Federal Regulations that are applicable to conditions of payment, the State's written policies, and a comparison between the documentation and written policies and the information presented on the claim resulting in Federal and/or State improper payments.

(2) The difference in payment between what the State paid (as adjusted within improper payment measurement guidelines) and what the State should have paid, in accordance with 42 CFR parts 440 through 484 in accordance with the applicable conditions of payment in this chapter and the State's documented policies is the dollar measure of the payment error.

(3) Medical review errors include, but are not limited to the following:

(i) Lack of documentation.

(ii) Insufficient documentation.

(iii) Procedure coding errors.

(iv) Diagnosis coding errors.

(v) Unbundling.

(vi) Number of unit errors.

(vii) Medically unnecessary services.

(viii) Policy violations.

(ix) Administrative errors.

(d) *Eligibility errors.* (1) An eligibility error is an error resulting in an overpayment or underpayment that is determined from a review of a beneficiary's eligibility determination, in comparison to the documentation used to establish a beneficiary's eligibility and applicable federal and state regulations and policies, resulting in Federal and/or State improper payments.

(2) Eligibility errors include, but are not limited to the following:

(i) Ineligible individual, but authorized as eligible when he or she received services.

(ii) Eligible individual for the program, but was ineligible for certain services he or she received.

(iii) Lacked or had insufficient documentation in his or her case record, in accordance with the State's documented policies and procedures, to make a definitive review decision of eligibility or ineligibility.

(iv) Was ineligible for managed care but enrolled in managed care.

(3) The dollars paid in error due to the eligibility error is the measure of the payment error.

(4) A State eligibility error does not result from the State's verification of an applicant's self-declaration or self-certification of eligibility for, and the correct amount of, medical assistance or child health assistance, if the State process for verifying an applicant's self-declaration or self-certification satisfies the requirements in Federal law, guidance, or if applicable, Secretary approval.

(e) *Errors for purposes of determining the national improper payment rates.* (1)

The Medicaid and CHIP national improper payment rates include but are not limited to the errors described in paragraphs (b) through (d) of this section.

(2) Eligibility errors resulting solely from determinations of Medicaid or CHIP eligibility delegated to and made by the Federally Facilitated Marketplace will be included in the national improper payment rate.

(f) *Errors for purposes of determining the State improper payment rates.* (1) The Medicaid and CHIP State improper payment rates include but are not limited to, the errors described in paragraphs (b) through (d) of this section, and do not include the errors described in paragraph (e)(2) of this section.

(g) *Error codes.* CMS will define different types of errors within the above categories for analysis and reporting purposes. Only Federal and/or State dollars in error will factor into a State's PERM improper payment rate.

■ 16. Section 431.970 is revised to read as follows:

§ 431.970 Information submission and systems access requirements.

(a) States must submit information to the Secretary for, among other purposes, estimating improper payments in Medicaid and CHIP, that include but are not limited to—

(1) Adjudicated fee-for-service or managed care claims information or both, on a quarterly basis, from the review year;

(2) Upon request from CMS, provider contact information that has been verified by the State as current;

(3) All medical, eligibility, and other related policies in effect and any quarterly policy updates;

(4) Current managed care contracts, rate information, and any quarterly updates applicable to the review year;

(5) Data processing systems manuals;

(6) Repricing information for claims that are determined during the review to have been improperly paid;

(7) Information on claims that were selected as part of the sample, but changed in substance after selection, for example, successful provider appeals;

(8) Adjustments made within 60 days of the adjudication dates for the original claims or line items with sufficient information to indicate the nature of the adjustments and to match the adjustments to the original claims or line items;

(9) Case documentation to support the eligibility review, as requested by CMS;

(10) A corrective action plan for purposes of reducing erroneous payments in FFS, managed care, and eligibility; and

(11) Other information that the Secretary determines is necessary for, among other purposes, estimating improper payments and determining improper payment rates in Medicaid and CHIP.

(b) Providers must submit information to the Secretary for, among other purposes estimating improper payments in Medicaid and CHIP, which include but are not limited to Medicaid and CHIP beneficiary medical records, within 75 calendar days of the date the request is made by CMS. If CMS determines that the documentation is insufficient, providers must respond to the request for additional documentation within 14 calendar days of the date the request is made by CMS.

(c) The State must provide the Federal contractor(s) with access to all payment system(s) necessary to conduct the medical and data processing review, including the Medicaid Management Information System (MMIS), any systems that include beneficiary demographic and/or provider enrollment information, and any document imaging systems that store paper claims.

(d) The State must provide the Federal contractor(s) with access to all eligibility system(s) necessary to conduct the eligibility review, including any eligibility systems of record, any electronic document management system(s) that house case file information, and systems that house the results of third party data matches.

■ 17. Section 431.972 is revised to read as follows:

§ 431.972 Claims sampling procedures.

(a) *General requirements.* States will submit quarterly FFS claims and managed care payments, as identified in § 431.970(a), to allow federal contractors to conduct data processing, medical record, and eligibility reviews to meet the requirements of the PERM measurement.

(b) *Claims universe.* (1) The PERM claims universe includes payments that were originally paid (paid claims) and for which payment was requested but denied (denied claims) during the PERM review period, and for which there is FFP (or would have been if the claim had not been denied) through Title XIX (Medicaid) or Title XXI (CHIP).

(2) The State must establish controls to ensure FFS and managed care universes are accurate and complete, including comparing the FFS and managed care universes to the Form CMS–64 and Form CMS–21 as appropriate.

(c) *Sample size.* CMS estimates a State's annual sample size for the PERM review at the beginning of the PERM cycle.

(1) *Precision and confidence levels.* The national annual sample size will be estimated to achieve at least a minimum National-level improper payment rate with a 90 percent confidence interval of plus or minus 2.5 percent of the total amount of all payments for Medicaid and CHIP.

(2) *State-specific sample sizes.* CMS will develop State-specific sample sizes for each state. CMS may take into consideration the following factors in determining a State's annual state-specific sample size for the current PERM cycle: State-level precision goals for the current PERM cycle; the improper payment rate and precision of that improper payment rate from the State's previous PERM cycle; the State's overall Medicaid and CHIP expenditures; and other relevant factors as determined by CMS.

§ 431.974 [Removed]

■ 18. Section 431.974 is removed.

§ 431.978 [Removed]

■ 19. Section 431.978 is removed.

§ 431.980 [Removed]

■ 20. Section 431.980 is removed.

§ 431.988 [Removed]

■ 21. Section 431.988 is removed.

■ 22. Section 431.992 is revised to read as follows:

§ 431.992 Corrective action plan.

(a) The State must develop a separate corrective action plan for Medicaid and CHIP for each improper payment rate measurement, designed to reduce improper payments in each program based on its analysis of the improper payment causes in the FFS, managed care, and eligibility components.

(1) The corrective action plan must address all errors that are included in the state improper payment rate defined at § 431.960(f)(1) and all deficiencies.

(2) [Reserved]

(b) In developing a corrective action plan, the State must take the following actions:

(1) *Error analysis.* States must conduct analysis such as reviewing causes, characteristics, and frequency of errors that are associated with improper payments. States must review the findings of the analysis to determine specific programmatic causes to which errors are attributed (for example, provider lack of understanding of the requirement to provide documentation), if any, and to identify root improper payment causes.

(2) *Corrective action planning.* States must determine the corrective actions to be implemented that address the root improper payment causes and prevent that same improper payment from occurring again.

(3) *Implementation and monitoring.* (i) States must develop an implementation schedule for each corrective action and implement those actions in accordance with the schedule.

(ii) The implementation schedule must identify all of the following for each action:

(A) The specific corrective action.

(B) Status.

(C) Scheduled or actual implementation date.

(D) Key personnel responsible for each activity.

(E) A monitoring plan for monitoring the effectiveness of the action.

(4) *Evaluation.* The State must submit an evaluation of the corrective action plan from the previous measurement. States must evaluate the effectiveness of the corrective action(s) by assessing all of the following:

(i) Improvements in operations.

(ii) Efficiencies.

(iii) Number of errors.

(iv) Improper payments.

(v) Ability to meet the PERM improper payment rate targets assigned by CMS.

(c) The State must submit to CMS and implement the corrective action plan for the fiscal year it was reviewed no later than 90 calendar days after the date on which the State's Medicaid or CHIP improper payment rates are posted on the CMS contractor's Web site.

(d) The State must provide updates on corrective action plan implementation progress annually and upon request by CMS.

(e) In addition to paragraphs (a) through (d) of this section, States that have eligibility improper payment rates over the allowable threshold of 3 percent for consecutive PERM years, must submit updates on the status of corrective action implementation to CMS every other month. Status updates must include, but are not limited to the following:

(1) Details on any setbacks along with an alternate corrective action or workaround.

(2) Actual examples of how the corrective actions have led to improvements in operations, and explanations for how the improvements will lead to a reduction in the number of errors, as well as the state's next PERM eligibility improper payment rate.

(3) An overall summary on the status of corrective actions, planning, and implementation, which demonstrates how the corrective actions will provide the state with the ability to meet the 3 percent threshold.

■ 23. Section 431.998 is revised to read as follows:

§ 431.998 Difference resolution and appeal process.

(a) The State may file, in writing, a request with the relevant Federal contractor to resolve differences in the Federal contractor's findings based on medical, data processing, or eligibility reviews in Medicaid or CHIP.

(b) The State must file requests to resolve differences based on the medical, data processing, or eligibility reviews within 20 business days after the report of review findings is shared with the state.

(c) To file a difference resolution request, the State must be able to demonstrate all of the following:

(1) Have a factual basis for filing the request.

(2) Provide the appropriate Federal contractor with valid evidence directly related to the finding(s) to support the State's position.

(d) For a finding in which the State and the Federal contractor cannot resolve the difference in findings, the State may appeal to CMS for final resolution by filing an appeal within 10 business days from the date the relevant Federal contractor's finding as a result of the difference resolution is shared with the State. There is no minimum dollar threshold required to appeal a difference in findings.

(e) To file an appeal request, the State must be able to demonstrate all of the following:

(1) Have a factual basis for filing the request.

(2) Provide CMS with valid evidence directly related to the finding(s) to support the State's position.

(f) All differences, including those pending in CMS for final decision that are not overturned in time for improper payment rate calculation, will be considered as errors in the improper payment rate calculation in order to meet the reporting requirements of the IPIA.

■ 24. Section 431.1010 is added to read as follows:

§ 431.1010 Disallowance of Federal financial participation for erroneous State payments (for PERM review years ending after July 1, 2020).

(a) *Purpose.* This section establishes rules and procedures for disallowing Federal financial participation (FFP) in erroneous medical assistance payments due to eligibility improper payment errors, as detected through the PERM program required under this subpart, in effect on and after July 1, 2020.

(2) After the State's eligibility improper rate has been established for each PERM review period, CMS will compute the amount of the disallowance and adjust the FFP payable to each State.

(3) CMS will compute the amount to be withheld or disallowed as follows:

(i) Subtract the 3 percent allowable threshold from the lower limit of the State's eligibility improper payment rate percentage.

(ii) If the difference is greater than zero, the Federal medical assistance funds for the period, are multiplied by that percentage. This product is the amount of the disallowance or withholding.

(b) *Notice to States and showing of good faith.* (1) If CMS is satisfied that the State did not meet the 3 percent allowable threshold despite a good faith effort, CMS will reduce the funds being disallowed in whole.

(2) CMS may find that a State did not meet the 3 percent allowable threshold despite a good faith effort if the State has taken the action it believed was needed to meet the threshold, but the threshold was not met. CMS will grant a good faith waiver only if a state both:

(i) Participates in the MEQC pilot program in accordance with subpart P (§ 431.800 through § 431.820), and

(ii) Implements PERM CAPs in accordance with § 431.992.

(3) States that have improper payment rates above the allowable threshold will be notified by CMS of the amount of the disallowance.

(c) *Disallowance subject to appeal.* If a State does not agree with a disallowance imposed under paragraph (e) of this section, it may appeal to the Departmental Appeals Board within 30 days from the date of the final disallowance notice from CMS. The regular procedures for an appeal of a disallowance will apply, including review by the Appeals Board under 45 CFR part 16.

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 25. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 26. Section 457.628(a) is revised to read as follows:

§ 457.628 Other applicable Federal regulations.

* * * * *

(a) HHS regulations in §§ 431.800 through 431.1010 of this chapter (related to the PERM and MEQC programs); §§ 433.312 through 433.322 of this chapter (related to Overpayments); § 433.38 of this chapter (Interest charge on disallowed claims of FFP); §§ 430.40 through 430.42 of this chapter (Deferral of claims for FFP and Disallowance of claims for FFP); § 430.48 of this chapter (Repayment of Federal funds by installments); §§ 433.50 through 433.74 of this chapter (sources of non-Federal share and Health Care-Related Taxes and Provider Related Donations); and § 447.207 of this chapter (Retention of Payments) apply to State's CHIP programs in the same manner as they apply to State's Medicaid programs.

* * * * *

Dated: April 7, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: June 3, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–14536 Filed 6–20–16; 11:15 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 16–161; FCC 16–62]

Revisions to Public Inspection File Requirements—Broadcaster Correspondence File and Cable Principal Headend Location

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to eliminate two public inspection file requirements—the requirement that commercial broadcast stations retain in their public inspection file copies of letters and emails from the public and the requirement that cable operators maintain for public inspection the designation and location of the cable system's principal headend. Because of potential privacy concerns associated with putting the correspondence file online and because many cable operators prefer not to post online the location of their principal headend for security reasons, removing these requirements would enable commercial broadcasters and cable operators to make their entire public inspection file available online and obviate also maintaining a local public file. Eliminating these public file requirements thus would reduce the regulatory burdens on commercial broadcasters and cable operators.

DATES: Comments may be filed on or before July 22, 2016, and reply comments may be filed August 22, 2016. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, should be submitted on or before August 22, 2016.

ADDRESSES: You may submit comments, identified by MB Docket No. 14–127, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov* and also to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas-A.-Fraser@omb.eop.gov.* For detailed instructions for submitting comments and additional information on the rulemaking process, see the supplementary information section of this document.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Media Bureau, Policy Division, 202–418–2154, or email at *kim.matthews@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), FCC 16–62, adopted on May 25, 2016 and released on May 25, 2016. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This *NPRM* contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the modified information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box,

(5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

OMB Control Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 41,695 respondents; 63,364 responses.

Estimated Hours per Response: 1–52 hours per response.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Total Annual Burden: 2,073,048 hours.

Total Annual Cost: $3,667,339.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 151, 152, 154(i), 303, 307, and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the NPRM, the Commission proposes to eliminate the requirement in sections 73.1202 and 73.3526(e)(9) of its rules that commercial broadcast stations retain in their public inspection file copies of letters and emails from the public. We tentatively conclude that this component of our public inspection file rules involves documents that do not need to be made available to the general public and that eliminating this requirement would reduce the burden of maintaining the public inspection file on commercial broadcasters. Our goal is also to permit commercial television and radio broadcasters to cease maintaining a local public inspection file if they post all public file material to the online public file database and provide online access via their own Web site to back-up political file material. The Commission has previously adopted this option for other entities subject to our online public inspection file requirements. Because the correspondence file cannot be made available online for privacy reasons, removing this requirement would permit commercial broadcasters to elect to make their entire public inspection file available online and cease maintaining a local public file, thereby further reducing overall regulatory burdens on these entities.

OMB Control Number: 3060–0316.

Title: 47 CFR 76.5, Definitions, 76.1700, Records to Be Maintained Locally by Cable System Operators; 76.1702, Equal Employment Opportunity; 76.1703, Commercial Records on Children's Programs; 76.1707, Leased Access; 76.1711, Emergency Alert System (EAS) Tests and Activation.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities.

Number of Respondents/Responses: 3,000 respondents; 3,000 responses.

Estimated Hours per Response: 18 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 54,000 hours.

Total Annual Cost: $591,840.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: In the NPRM, the Commission proposes to revise its rules to eliminate the requirement in sections 76.5(pp) and 76.1700(a)(6) of its rules that cable systems retain the location and designation of the principal headend in their public file, which would reduce public inspection file requirements for these entities. However, the NPRM also proposes to revise its rules to require that cable systems provide this information to the FCC. In addition, the NPRM recognizes that information regarding the designation and location of the principal headend must continue to be made available to television stations and possibly other entities, and seeks comments on options for ways to accomplish this.

OMB Control Number: 3060–0649.

Title: Section 76.1601, Deletion or Repositioning of Broadcast Signals; Section 76.1617, Initial Must-Carry Notice; Section 76.1607, Principal Headend.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions.

Number of Respondents/Responses: 3,300 respondents; 3,950 responses.

Estimated Hours per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement, Third party disclosure requirement, Recordkeeping requirement.

Total Annual Burden: 2,050 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in section 4(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: The Commission's rules currently require the operator of every cable television system to maintain for public inspection the designation and location of its principal headend (47 CFR 76.1708). If an operator changes the designation of its principal headend, that new designation must be included in its public file. The NPRM proposes to remove and reserve this rule section.

Synopsis

I. Introduction

1. In this *NPRM,* we propose to eliminate two public inspection file requirements: (i) The requirement that commercial broadcast stations retain in their public inspection file copies of letters and emails from the public; and (ii) the requirement that cable operators maintain for public inspection the designation and location of the cable system's principal headend. Because of potential privacy concerns associated with putting the correspondence file online and because many cable operators prefer not to post online the location of their principal headend for security reasons, removing these requirements would enable commercial broadcasters and cable operators to make their entire public inspection file available online and obviate also maintaining a local public file. Eliminating these public file requirements thus would reduce the regulatory burdens on commercial broadcasters and cable operators.

II. Background

A. Correspondence File

2. Section 73.3526(e)(9) of the Commission's rules provides that commercial broadcast stations must retain in their public inspection file "[a]ll written comments and suggestions received from the public regarding operation of the station unless the letter writer has requested that the letter not be made public or the licensee believes the letter should be excluded from public inspection because of the nature of its content," such as a situation in which a letter contains content that is defamatory or obscene. The rule also expressly applies to email messages transmitted to station management or to an email address publicized by the station. In addition, section 73.1202 requires commercial radio and television broadcasters to retain written comments and suggestions from the public regarding the station operation in their local public inspection file. The language of this rule differs from section 73.3526 in that it does not specifically address emails received from the public and requires that letters received by TV and Class A TV licensees be separated into two categories—programming and non-programming.

3. The Commission first required commercial radio and television broadcasters to retain written comments and suggestions from the public and make them available for public inspection in 1973. That public file obligation, set forth in section 73.1202 of the Commission's rules, was adopted together with a requirement that commercial broadcast stations air regular announcements "informing the public of the licensee's obligation to the public and of the appropriate method for individuals to express their opinions of the station's operation." The purpose of the correspondence file was "to permit a member of the public to better determine the nature of community feedback being received by the licensees and the extent to which his or her opinions regarding community problems and needs and/or the licensee's station operation might be shared by other members of the community." The Commission later removed the requirement in section 73.1202 that licensees air announcements regarding their obligations to the public, noting that section 73.3580 of the rules requires that both commercial and noncommercial stations make announcements in connection with the filing of their license renewal applications and concluding that these renewal application announcements were sufficient to inform the public of the "Commission's oversight functions and the availability of public recourse." The Commission, however, retained the requirement that licensees keep all written comments and suggestions received from the public in their public inspection files. In 1998, the Commission removed rule section 73.1202, and moved the requirement governing the retention of communications from the public to section 73.3526, the public file rule section for commercial broadcast stations. The removal of section 73.1202 has yet to be reflected in the Code of Federal Regulations.

4. The correspondence file requirement applies only to commercial broadcasters; there is no similar requirement for noncommercial broadcasters. There is also no correspondence file requirement for cable operators, DBS providers, or satellite radio licensees, all of which have other public inspection file obligations.

B. Principal Headend Location

5. Section 76.1708 of the Commission's rules requires operators of all cable television systems to "maintain for public inspection the designation and location of [the system's] principal headend. If an operator changes the designation of its principal headend, that new designation must also be included in its public file." The Commission first adopted the principal headend public file requirement in 1993 in an order implementing the must-carry and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"). Pursuant to the Cable Act, commercial television stations must deliver a good quality signal to a cable system's "principal headend" in order to be eligible for must-carry rights on that system. The Cable Act's provisions regarding eligibility for must-carry rights for noncommercial and low power television stations also refer to a cable system's "principal headend." In the Must-Carry Order, the Commission required cable systems to retain various records relating to must-carry obligations in their public file, including, as noted above, the designation and location of the system's principal headend.

C. Online Public Inspection File

6. In 2012, the Commission adopted online public inspection file rules for television broadcasters that required them to post public file documents to a central, FCC-hosted online database rather than maintaining files locally at their main studios. *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Second Report and Order, 77 FR 27631, May 11, 2012 (Television Online Public File Order). However, in the Television Online Public File Order, the Commission determined that letters and emails from the public should not be uploaded to the online file but should instead continue to be maintained at the station's main studio. The Commission concluded that including letters and emails from the public in the online file could risk exposing personally identifiable information and that requiring stations to redact such information prior to uploading these documents would be overly burdensome.

7. In January 2016, the Commission adopted the Expanded Online Public File Order, in which it added cable operators, DBS providers, broadcast radio licensees, and satellite radio licensees to the list of entities required to post their public inspection files to the FCC-hosted online database. *See Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees,* Report and Order, 81 FR 10105, February 29, 2016 (Expanded Online Public File Order). With respect to commercial radio licensees, the Commission concluded, consistent with the decision reached in the Television Online Public File Order, that it would exempt letters and emails from the public from the online file and instead require stations to continue to retain such material at the station. The Commission also concluded that it would not require cable operators to include principal headend location information in the online public file and instead gave operators the option to continue instead to retain this information in their local public file.

8. The Commission determined in the Expanded Online Public File Order that entities that upload all public file material to the FCC's online database and that also provide online access to back-up political file documents via the entity's own Web site when the FCC's online database is temporarily unavailable will not be required to maintain a local public file. The Commission noted, however, that this option is not available to commercial broadcast licensees, which must continue to retain a correspondence file that cannot be made available online for privacy reasons. The Commission indicated in the Expanded Online Public File Order that it would initiate

a proceeding to consider whether to eliminate the correspondence file requirement for commercial broadcasters. As requested by NCTA, we also consider herein whether we should eliminate the requirement that cable operators retain information regarding the location of their principal headend in the public inspection file. As NCTA has observed, under our current rules, operators who feel the need to avoid posting this information online for security reasons are required to retain this information locally and therefore are unable to transition to a fully online public inspection file.

III. Discussion

A. Correspondence File

9. We tentatively conclude that we should eliminate the requirement that commercial broadcasters retain letters and emails from the public in their public inspection files and invite comment on this tentative conclusion. The goal of this requirement was to ensure that broadcasters comply with their public interest obligation to air programming that is responsive to the needs and interests of their community of license. As the Commission recognized in the 1981 Renewal Applications Order, however, most of the Commission's scrutiny of all but the most egregious licensee conduct occurs in conjunction with consideration of a station's license renewal application. *See Radio Broadcast Services; Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees,* Report and Order, 46 FR 26236, May 11, 1981. Any interested listeners and viewers may file comments and/or petitions concerning licensee performance at the time the station files its renewal application. Interested parties also may file a complaint with the Commission regarding a station's performance at any time during the license period. While listeners and viewers may communicate directly with the station via letters, emails, or other forms of communication at any time during the license term, we do not believe it is necessary to require that stations retain and make available to the public the letters and emails they receive regarding operation of the station to ensure that the station meets its obligation to serve its local community. Eliminating these public inspection file requirements would reduce the burden on commercial broadcasters without affecting the public's ability to communicate directly with the station or to file petitions, comments, and complaints regarding the station with the FCC.

10. Eliminating the correspondence file requirement would have the added benefit of providing commercial television and radio broadcasters with the same option as noncommercial broadcasters and other entities subject to our online public inspection file requirements to cease maintaining a local public inspection file if they post all public file material to the online public file database and provide online access via their own Web site to back-up political file material. Extending this option to commercial broadcasters would allow them to realize the full benefits in terms of cost savings and reduced regulatory burdens of moving their public files online, and would also create greater regulatory parity among entities subject to public file obligations.

11. We invite comment on these views and our proposal to eliminate the correspondence file requirement, including responses to the following questions. Are there other benefits to eliminating the requirement? On the other hand, are there benefits to maintaining local correspondence file obligations we should consider? How frequently do local consumers or others make use of the correspondence file? Does it contain information that continues to be useful to local viewers or listeners, or other interested parties, that cannot be obtained through other means? What impact does the use of social media by broadcast stations have on viewers' ability to communicate with the stations and others regarding the stations' programming and other issues? We request that commenters explain how any benefits of either eliminating or retaining local correspondence rules would outweigh any potential costs.

B. Headend Location Information

12. We also propose to eliminate the requirement that cable operators retain information about the designation and location of their principal headends in their public inspection files. In the Expanded Online Public File Order, we reserved judgement as to whether there are valid security concerns associated with posting the location of the principal headend online. We observed, however, that the general public is unlikely to be interested in this information and therefore permitted operators who prefer to retain this information locally rather than posting it online to do so. In that Order, our focus was on adapting our existing public file requirements to an online format rather than considering substantive changes to the public file rules. NCTA subsequently requested that we consider eliminating the requirement that cable operators retain information regarding the location of the principal headend in the public inspection file. In this proceeding, we propose to eliminate this public inspection file requirement because we do not believe that the general public has any need for or interest in this information. Eliminating this requirement would permit all cable operators to transition to a fully online public inspection file, obviating the need for them to also maintain local files, and address the concerns of those operators who believe there may be a potential security risk associated with disclosing the location of the principal headend online.

13. At the time the original public inspection file requirement was adopted, the Commission's focus was to ensure that information was provided to television stations and the Commission regarding the location of a cable system's principal headend for purposes of determining carriage rights and enforcement. There was no discussion in the implementing order about the general public's need to access this information. We are unaware of any reason that the general public would need to know the location of a cable system's principal headend, but we recognize that television stations must have access to this information in order to exercise their must-carry rights. In addition, the Commission must have this information in order to enforce its signal leakage rules and to respond to must-carry and signal leakage complaints. We also recognize that local franchising authorities may need access to it in connection with their oversight of local cable systems and operations. Accordingly, if we eliminate the requirement to retain principal headend location information in the public inspection file, we would adopt means for this information to remain available to those entities that need it.

14. We invite comment generally on our proposal to eliminate the principal headend public file requirement. Are there benefits to retaining this requirement? Would the benefits of eliminating the requirement outweigh the cost if we were to make information regarding the principal headend available to the Commission, television stations and/or local franchising authorities by other means?

15. We also seek comment on how the FCC should collect principal headend information from cable operators if we eliminate the requirement that it be maintained in the public file. One possibility would be to have cable operators submit this information to the

Commission upon request. Another possibility would be to have cable operators submit this information using one or more existing FCC forms that could be revised for this purpose, such as FCC Form 322 (Cable Community Registration), 324 (Cable Operator, Mail Address, and Operational Status Changes), and/or 325 (Annual Cable Operator Report). We invite comment generally on this approach and on any alternative means we should consider to collect this information. Should we keep headend location information filed with the FCC confidential and not make this information routinely available to the general public?

16. As noted above, if we eliminate the principal headend public file requirement, we propose to require that cable operators provide information regarding the designation and location of the system's principal headend to television stations. Should we also require that this information be provided to local franchising authorities? Are there any other entities that should be able to access it? How should this information be provided? If we update our existing Form 322, 324, or 325 to include principal headend information, should we also provide a means for broadcasters to access that information for purposes related to their must-carry rights? Should we also make it accessible to franchising authorities or any other entities? What methods should we use to make the information accessible? Alternatively, should we require cable operators to provide this information to entities that need it upon request? If so, what requirements should we impose regarding the format of these requests and the format and timing of the cable system's response? We note that our existing rules require cable operators to provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend. If we require that cable operators provide principal headend information upon request, should we require that this information be provided in writing by certified mail? Should we require any requests for that information also to be submitted in writing by certified mail? Should we instead permit the request and response to be made electronically? Should we require broadcast stations to keep information regarding the location of a cable system's principal headend confidential, or do broadcasters have a valid reason at times to disclose this information, such as in pleadings related to a cable carriage dispute?

IV. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities of the policies and rules proposed in the Notice of Proposed Rulemaking ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

18. The NPRM proposes to eliminate two public inspection file requirements—the requirement that commercial broadcast stations retain in their public inspection file copies of letters and emails from the public and the requirement that cable operators maintain for public inspection the designation and location of the cable system's principal headend. We tentatively conclude that these two components of our public inspection file rules involve documents or information that does not need to be made available to the general public and that eliminating these rules would reduce the burden of maintaining the public inspection file on commercial broadcasters and cable operators. Our goal is also to permit commercial television and radio broadcasters and cable operators to cease maintaining a local public inspection file if they post all public file material to the online public file database and provide online access via their own Web site to back-up political file material. The Commission has previously adopted this option for other entities subject to our online public inspection file requirements. Because the correspondence file cannot be made available online for privacy reasons and because many cable operators prefer not to post the location of their principal headend online for security reasons, removing these requirements would permit commercial broadcasters and cable operators to elect to make their entire public inspection file available online and cease maintaining a local public file, thereby further reducing overall regulatory burdens on these entities.

19. The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(j), 303, 601, 614 and 615 of the Communications Act, 47 U.S.C. 151, 152, 154(i), 154(j), 303, 601, 614, and 615.

20. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

21. *Television Broadcasting.* This economic Census category "comprises establishments primarily engaged in broadcasting images together with sound." The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of $25,000,000 or less, and 99 had annual receipts of more than $25,000,000. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

22. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,387 stations. Of this total, 1,221 stations (or about 88 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. Based on these data, we estimate that the majority of television broadcast stations are small entities.

23. *Class A TV Stations.* The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations, as well as to potential licensees in these television services. As noted above, the SBA has created the following small business size standard for this category:

those having $38.5 million or less in annual receipts. The Commission has estimated the number of licensed Class A television stations to be 405. Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

24. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the revenue threshold noted above, our estimate of the number of small entities affected is likely overstated. In addition, we note that one element of the definition of "small business" is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, our estimate of small television stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

25. *Radio Broadcasting.* The SBA defines a radio broadcast station as a small business if such station has no more than $38.5 million in annual receipts. Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public." According to review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of November 26, 2013, about 11,331 (or about 99.9 percent) of the then number of commercial radio stations (11,341) have revenues of $35.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial radio stations to be 4,095. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. This estimate, therefore, likely overstates the number of small entities that might be affected, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

26. As noted above, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

27. *Cable Companies and Systems.* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data shows that there were are currently 660 cable operators. Of this total, all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,537 cable systems nationwide. Of this total, 3,965 cable systems have less than 20,000 subscribers, and 572 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

28. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." There are approximately 53 million cable video subscribers in the United States today. Accordingly, an operator serving fewer than 540,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

29. The rule change proposed in the NPRM would reduce reporting, recordkeeping, and other compliance requirements for commercial broadcast stations which are currently required to retain letters and emails from the public in their local public inspection file. The NPRM proposes to eliminate this requirement, which would reduce recordkeeping burdens on these entities. In addition, eliminating the correspondence file requirement would permit commercial radio and television stations to fully transition to the online public file and to cease maintaining a local public file, allowing them to realize the long-term cost savings associated with the online public file.

30. The overall effect of the rule changes proposed in the NPRM on cable operators is less clear. The NPRM proposes to eliminate the requirement that cable systems retain the location and designation of the principal headend in their public file, which would reduce public inspection file requirements for these entities. However, the NPRM recognizes that this information must continue to be made available to the FCC and to television stations and seeks comments on options for ways to accomplish this. Some of these options could result in greater reporting, recordkeeping, or other compliance requirements than the existing public inspection file requirement. Cable operators may support more burdensome requirements, however, if they prefer to transition to a fully online public inspection file and are concerned about security risks associated with placing headend location information online.

31. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

32. The NPRM proposes to eliminate two current public file obligations—one applicable to commercial radio and television broadcasters and one applicable to cable operators.

Eliminating these obligations which would reduce overall public inspection file burdens on these affected entities. The NPRM seeks comment on these proposals, including any comments that might oppose eliminating these requirements. In addition, eliminating the correspondence file requirement would permit commercial radio and television stations to fully transition to the online public file and to cease maintaining a local public file, allowing them to realize this cost savings associated with the online public file.

33. With respect to cable operators, eliminating the headend location public inspection file requirement would necessitate establishing a different requirement to ensure that headend location information continues to be made available to the FCC and to television stations. The NPRM seeks comments on various ways to accomplish this. Some of these options could result in greater reporting, recordkeeping, or other compliance requirements than the existing public inspection file requirement. Cable operators may support more burdensome requirements, however, if they prefer to transition to a fully online public inspection file and are concerned about security risks associated with placing headend location information online.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

B. Paperwork Reduction Act Analysis

34. This document contains proposed new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements proposed in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Ex Parte Rules

35. The proceeding this NPRM initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

D. Comment Filing Procedures

36. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

37. *Additional Information:* For additional information on this proceeding, please contact Kim Matthews of the Media Bureau, Policy Division, *Kim.Matthews@fcc.gov*, (202) 418–2154.

V. Ordering Clauses

38. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 303(r), 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), 534, and 535, this Notice of Proposed Rulemaking *is adopted.*

39. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 73

Broadcast Radio.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons stated in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.1202 [Removed and Reserved].

■ 2. Section 73.1202 is removed and reserved.

■ 3. Section 73.3526 is amended by revising paragraphs (a)(1) and (2), (b)(1), and (b)(2)(i); removing paragraph (e)(9) and redesignating (e)(10) through (e)(17) as (e)(9) through (e)(16).

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

(1) Applicants for a construction permit for a new station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(2) and (e)(9) of this section. A separate file shall be maintained for each station for which an application is pending. If the application is granted, paragraph (a)(2) of this section shall apply.

(2) Every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(9) and paragraph (e)(12) of this section. In addition, every permittee or licensee of a commercial TV or Class A TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(10), (e)(14), (e)(15), and (e)(16) of this section, and every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(11), (e)(13), and (e)(15) of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

b) * * *

(1) For radio licensees temporarily exempt from the online public file hosted by the Commission, as discussed in paragraph (b)(2) of this section, a hard copy of the public inspection file shall be maintained at the main studio of the station, unless the licensee elects voluntarily to place the file online as discussed in paragraph (b)(2) of this section. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2)(i) A television station licensee or applicant, and any radio station licensee or applicant not temporarily exempt as described in this paragraph, shall place the contents required by paragraph (e) of this section of its public inspection file in the online public file hosted by the Commission, with the exception of the political file as required by paragraph (e)(6) of this section, as discussed in paragraph (b)(3) of this section. Any radio station not in the top 50 Nielsen Audio markets, and any radio station with fewer than five full-time employees, shall continue to retain the public inspection file at the station in the manner discussed in paragraph (b)(1) of this section until March 1, 2018. However, any radio station that is not required to place its public inspection file in the online public file hosted by the Commission before March 1, 2018 may choose to do so, instead of retaining the public inspection file at the station in the manner discussed in paragraph (b)(1) of this section.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 4. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 5. Section 76.5 is amended by revising paragraph (pp)(2) to read as follows:

§ 76.5 Definitions.

(pp) * * *

(2) In the case of a cable system with more than one headend, the principal headend designated by the cable operator, except that such designation shall not undermine or evade the requirements of subpart D of this part. Each cable system must provide information regarding the designation and location of the principal headend to the FCC. Except for good cause, an operator may not change its choice of principal headend.

* * * * *

§ 76.1700 [Amended]

■ 6. Section 76.1700 is amended by removing paragraph (a)(6) and redesignating paragraphs (a)(7) through (a)(10) as (a)(6) through (a)(9).

§ 76.1708 [Removed and Reserved].

■ 7. Section 76.1708 is removed and reserved.

[FR Doc. 2016–14793 Filed 6–21–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 269

[Docket No. FRA–2016–0023; Notice No. 1]

RIN 2130–AC60

Competitive Passenger Rail Service Pilot Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes regulations to implement a pilot program for competitive selection of eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes operated by Amtrak. The proposed rule would develop this pilot program as required by a statutory mandate.

DATES: *Written Comments:* Written comments on the proposed rule must be received by August 22, 2016. FRA will consider comments received after that date if practicable.

Hearing Request: FRA anticipates resolving this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to July 22, 2016, then FRA will schedule such a hearing and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket Number FRA–2016–0023 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building,

1200 New Jersey Ave. SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN 2130–AC60). Note that FRA will post all comments received without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the "Supplemental Information" section of this document for Privacy Act information related to any submitted petitions or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time, or to the U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Brandon White, Office of Railroad Policy and Development, FRA, 1200 New Jersey Ave. SE., Washington, DC 20590, (202) 493–1327, or Zeb Schorr, Office of Chief Counsel, FRA, 1200 New Jersey Ave. SE., Mail Stop 10, Washington, DC 20590, (202) 493–6072.

SUPPLEMENTARY INFORMATION:

I. Notice of Proposed Rulemaking

A. Statutory Background

The proposed rule is in response to a statutory mandate—specifically, section 11307 of the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94, sec. 11307, 129 Stat. 1312, 1660–1664 (2015). Section 11307 states that the Secretary of Transportation (Secretary) must promulgate a rule to implement a pilot program for competitive selection of eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes, as defined in 49 U.S.C. 24102 and operated by Amtrak on the date the Passenger Rail Reform and Investment Act of 2015 (title XI of the FAST Act) was enacted.

Section 11307 also provides for, among other things, the following:

(1) Establishment of a petition, notification, and bid process through which the Secretary would evaluate bids to provide passenger rail service over particular long-distance routes by interested eligible petitioners and Amtrak;

(2) The Secretary's selection of a winning bidder;

(3) The Secretary's execution of a contract with the winning bidder awarding the right and obligation to provide intercity passenger rail service over the route, along with an operating subsidy, subject to such performance standards as the Secretary may require;

(4) Amtrak must provide access to the Amtrak-owned reservation system, stations, and facilities to a winning bidder;

(5) Employees used in the operation of a route under the pilot program would be considered an employee of that eligible petitioner and would be subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak;

(6) The winning bidder must provide hiring preference to displaced qualified Amtrak employees;

(7) The winning bidder would be subject to 49 U.S.C. 24405 grant conditions; and

(8) If a winning bidder ceases to operate the service, or to otherwise fulfill their obligations, the Secretary, in collaboration with the Surface Transportation Board, would take any necessary action consistent with the FAST Act to enforce the contract and to ensure the continued provision of service.

B. Timeline Established by the Proposed Rule

The proposed rule would establish deadlines for filing petitions, filing bids, and FRA's execution of contract(s) with any winning bidders. As to the filing of petitions, § 269.7(b) of the proposed rule would require a petition to be filed with FRA no later than 60 days after publication of the final rule implementing the pilot program. Section 269.9(a) would then require the FRA to publish in the **Federal Register** a notice of receipt of a petition not later than 30 days after the date of receipt.

As to the filing of bids, proposed § 269.9(b) would require both the petitioner and Amtrak, if Amtrak chose to do so, to submit complete bids to provide intercity passenger rail transportation over the applicable route with FRA not later than 120 days after FRA publishes a notice of receipt in the **Federal Register** under § 269.9(a). Proposed § 269.9(b) articulates the bid requirements.

Lastly, as to the award and execution of contracts with winning bidders (who are or do not include Amtrak), proposed § 269.13 would require FRA to execute a contract with a winning bidder not later than 270 days after the bid deadline established by proposed § 269.9.

C. Operating Subsidy

Section 11307 of the FAST Act requires the Secretary to award an operating subsidy to a winning bidder that is not or does not include Amtrak. 49 U.S.C. 24711(b)(1)(E)(ii). Specifically, the operating subsidy, as determined by the Secretary, would be for the first year at a level that does not exceed 90 percent of the level in effect for that specific route during the fiscal year preceding the fiscal year the petition was received, adjusted for inflation, and any subsequent years under the same calculation, adjusted for inflation.

To determine the operating subsidy amount, FRA would take the fully-allocated costs of the route, as operated by Amtrak in the prior fiscal year, including direct route costs, shared route costs, and indirect costs, into consideration so that the operating subsidy award would not result in an increase in the Federal subsidy of intercity passenger rail. In addition, as section 11307 of the FAST Act requires, FRA would provide to Amtrak an appropriate portion of the applicable appropriations to cover any cost directly attributable to termination of Amtrak service on the route and any indirect costs to Amtrak imposed on other Amtrak routes as a result of losing service on the route operated by the winning bidder. Any amount FRA provides to Amtrak under the prior sentence would not be deducted from, or have any effect on, the operating subsidy 49 U.S.C. 24711(b)(1)(E)(ii) requires.

The FAST Act also authorizes the Secretary to fund the operating subsidy by withholding such sums as are necessary from the amount appropriated to the Secretary for the use of Amtrak for activities associated with Amtrak's National Network. FAST Act, section 11101(e), 129 Stat. at 1623. However, if Congress does not appropriate funds that allow the Secretary to pay an operating subsidy, then the Secretary cannot award an operating subsidy to a winning bidder other than Amtrak as required by the FAST Act. Consequently, this pilot program proposes to make the award of any operating subsidy to a winning bidder that is not or does not include Amtrak, subject to the availability of funding. Accordingly, the Secretary's contract with a winning bidder that is not or does not include Amtrak would not award an operating subsidy unless the award is consistent with the FAST Act and the applicable appropriations act. In addition, the Secretary would award the operating subsidy to the winning bidder annually and, again, only consistent with the FAST Act and the applicable appropriations act (*i.e.,* the Secretary would not award all four years of the operating subsidy at one time).

II. Section-by-Section Analysis

Section 269.1 Purpose

This section provides that the proposed rule would carry out the statutory mandate in 49 U.S.C. 24711 requiring FRA, on behalf of the Secretary, to implement a pilot program to competitively select eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes, as defined in 49 U.S.C. 24102, and operated by Amtrak on the date of enactment of the FAST Act.

Section 269.3 Application

Paragraph (a) of this section provides that the proposed pilot program would not be made available to more than three Amtrak long-distance routes, as defined in 49 U.S.C. 24102. This proposed paragraph is based on the FAST Act directive in 49 U.S.C. 24711(a).

Paragraph (b) of this section proposes that any eligible petitioner awarded a contract to provide passenger rail service under the pilot program could only provide such service for a period not to exceed four years from the date the winning bidder commenced service and, at FRA's discretion on behalf of the Secretary, FRA could renew such service for one additional operation period of four years. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(A).

Section 269.5 Definitions

This section contains the definitions FRA proposes to use in this rule for the following terms: Act; Administrator; Amtrak; Eligible petitioner; File and Filed; Financial plan; FRA; Operating plan; and Long-distance route.

This section proposes to define "financial plan" to mean a plan that contains, for each Federal fiscal year fully or partially covered by the bid: an annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds) attributable to the route; and a statement of the assumptions underlying the financial plan's contents.

In addition, this proposed section defines "operating plan" to mean a plan that contains, for each Federal fiscal year fully or partially covered by the bid: A complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between each city-pair proposed to be served; and a statement of the assumptions underlying the operating plan's contents. The proposed rule would require bidders to include a financial plan and an operating plan—as those terms are defined here—in their bids. These proposed definitions would ensure that bids contain sufficient information to be evaluated.

This section also proposes to define "long-distance route" to mean those routes described in 49 U.S.C. 24102(5) and operated by Amtrak on the date the FAST Act was enacted. This definition is based on the statutory directive in 49 U.S.C. 24711(a).

Section 269.7 Petitions

Paragraph (a) of this section proposes that an eligible petitioner may petition FRA to provide intercity passenger rail transportation over a long-distance route in lieu of Amtrak for a period of time consistent with the time limitations described in § 269.3(c). This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(A).

Paragraph (b) of this section proposes that a petition submitted to FRA under this rule must: be filed with FRA no later than 60 days after FRA publishes the competitive passenger rail service pilot program final rule; describe the petition as a "Petition to Provide Passenger Rail Service under 49 CFR part 269"; and describe the long-distance route or routes over which the petitioner wants to provide intercity passenger rail transportation and the Amtrak service the petitioner wants to replace. This proposed paragraph is intended to ensure a petition provides clear notice to FRA.

Section 269.9 Bid Process

Paragraph (a) of this section proposes that FRA would notify the eligible petitioner and Amtrak of receipt of a petition filed with FRA by publishing a notice of receipt in the **Federal Register** not later than 30 days after FRA receives a petition. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(B)(i).

Paragraph (b) of this section describes the proposed bid requirements, including that a bid must be filed with FRA no later than 120 days after FRA publishes the notice of receipt in the **Federal Register** under § 269.9(a). Paragraph (b) further proposes the detailed information such bids must include. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(C).

Paragraph (c) of this section proposes that FRA could request supplemental information from a bidder and/or Amtrak if FRA determines it needs such information to adequately evaluate a bid. Such a request may seek information about the costs related to the service that Amtrak would still incur following the cessation of service, including the increased costs for other services. FRA would establish a deadline by which the bidder and/or Amtrak must submit the supplemental information to FRA.

Section 269.11 Evaluation

Paragraph (a) of this section proposes that FRA would select a winning bidder by evaluating the bids based on the requirements of this proposed part.

Paragraph (b) of this section proposes that, upon selecting a winning bidder, FRA would publish a notice in the **Federal Register** identifying the winning bidder, the long-distance route the bidder would operate, a detailed justification of the reasons why FRA selected the bid, and any other information the Secretary determines appropriate. FRA would request public comment for 30 days after the date on which FRA selects the bid. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(B)(iii).

Section 269.13 Award

Paragraph (a) of this section proposes that FRA would execute a contract with a winning bidder that is not or does not include Amtrak, consistent with the requirements of proposed § 269.13, and as FRA may otherwise require, not later than 270 days after the bid deadline established by proposed paragraph 269.9(b). This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(E).

Paragraph (b) of this section proposes what the contract would include. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(E), (b)(4), and (c)(3).

Paragraph (c) of this section proposes that the winning bidder would make their bid available to the public after the bid award with any appropriate confidential or proprietary information redactions. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(b)(1)(C)(ii).

Section 269.15 Access to Facilities; Employees

Paragraph (a) of this section proposes that, if an award under proposed § 269.13 is made to a bidder other than Amtrak, Amtrak must provide access to the Amtrak-owned reservation system, stations, and facilities directly related to operations of the awarded route(s) to the bidder. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(c).

Paragraph (b) of this section proposes that the employees of any person, except as provided in a collective bargaining agreement, a bidder uses to operate a route under the proposed rule would be considered an employee of that bidder and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(c)(2).

Paragraph (c) of this section proposes that a winning bidder would provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the winning bidder. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(c)(3).

Section 269.17 Cessation of Service

This section proposes under paragraph (a) that, if a bidder awarded a route under this rule ceases to operate the service or fails to fulfill its obligations under the contract required under proposed § 269.13, the Administrator, in collaboration with the Surface Transportation Board, would take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including the installment of an interim service rail carrier, providing to the interim rail carrier an operating subsidy necessary to provide service, and re-bidding the contract to operate the service. This section further proposes under paragraph (b) that the entity providing interim service would either be Amtrak or an eligible petitioner under § 269.5. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(d).

III. Regulatory Impact and Notices

1. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

FRA evaluated this proposed rule consistent with Executive Orders 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034; Feb. 26, 1979. FRA prepared and placed in the docket a regulatory evaluation addressing the economic impact of the proposed rule.

FRA does not expect any regulatory costs because this proposed rule would be voluntary and would not require an eligible petitioner to take any action. In addition, the proposed rule is limited to not more than three long-distance routes as defined in 49 U.S.C. 24102 and operated by Amtrak on the date the FAST Act was enacted. Furthermore, the current market conditions and the investment necessary to operate a long-distance service may further serve to limit the number of eligible petitioners submitting petitions under the proposed pilot program. Of course, if no eligible petitioners participate in the pilot program, then no costs or benefits would be incurred because of the proposed rule. However, FRA is estimating the costs and benefits generated when three eligible petitioners submit bids to operate long-distance rail service.

As discussed above, FRA assumed three entities would submit bids to estimate costs for the bidding scenario. The costs are solely due to preparing and filing a bid to operate service. Amtrak may submit a bid only if another entity submitted a petition to bid on a route. To estimate the cost for preparing and submitting a bid, FRA estimated the time and cost for FRA to review each bid. FRA estimates its review cost would be approximately $49,834 per bid. Based on the costs of collecting and analyzing data, drafting a bid, and gaining approval within the organization, FRA estimates a railroad or other entity that bids on a route would incur a cost of approximately three times as much as FRA's review cost— approximately $149,503 per bid. If an entity bids on a route, for this analysis, we assumed Amtrak would also submit a bid for the same route. Amtrak may have some of the data necessary to prepare the bid available. Therefore, their cost may be lower than another entity. Based on the costs of analyzing data, drafting a bid, and gaining approval within the organization, FRA estimated Amtrak's cost to prepare and submit a bid would be twice FRA's review cost —approximately $99,669. All bid costs would be incurred during the first year. The table below shows the estimated cost for an entity and Amtrak to bid on one long-distance route.

	FRA Review cost	Railroad/other entity bidder cost (FRA cost * 3)	Amtrak cost (FRA cost * 2)
Total Cost per Bid	$49,834	$149,503	$99,669

As stated above, FRA's total burden estimate assumes three bids would be submitted for long-distance routes. The total cost to entities other than Amtrak would be approximately $448,509. The total cost to Amtrak would be approximately $299,007. The sum of these two costs is $747,516. Since all petitions and bids would occur during the first year, the total cost would be approximately $747,516 over the four-year period (which could become 8 years if the Secretary renews a contract).

Some benefits are possible from this proposed rule. FRA cannot quantify the benefits but discussed them qualitatively in the regulatory evaluation. If no railroads submit a bid for operating service, Amtrak would continue to operate service as it currently does. Therefore, no benefits would occur because of this proposed rule. However, if other entities are awarded contracts, those entities may be able to operate the service in a manner that would be beneficial to passengers. Possible benefits include better service and lower cost.

The introduction of competition in the bidding process may increase passenger rail efficiency and generate public benefits by lowering the operational subsidy, and possibly leading to better service and/or lower operating costs to society. FRA expects no change to railroad safety due to this proposed regulation.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FRA is publishing this IRFA to help the public comment on the potential small business impacts of the requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. FRA will consider all information and comments received in the public comment process to determine the economic impact on small entities.

Reasons for Considering Agency Action

FRA is revising 49 CFR part 269 to comply with a statutory mandate requiring the Secretary to promulgate a rule to implement a pilot program for competitive selection of eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes. The proposed rule would develop this pilot program consistent with the statutory directive.

A Succinct Statement of the Objectives of, and the Legal Basis for, the Proposed Rule

The objective of this proposed rule is to implement the statutory mandate in FAST Act section 11307 to develop a pilot program for competitive selection of eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes, as defined in 49 U.S.C. 24102, operated by Amtrak on the date of enactment of the FAST Act.

A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies the rule would not have a significant economic impact on a substantial number of small entities. "Small entity" is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a "small entity" in the railroad industry is a for profit "line-haul railroad" that has fewer than 1,500 employees, a "short line railroad" with fewer than 500 employees, or a "commuter rail system" with annual receipts of less than seven million dollars. *See* "Size Eligibility Provisions and Standards," 13 CFR part 121, subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with the SBA and in conjunction with public comment. Under that authority, FRA has published a final statement of agency policy that formally establishes "small entities" or "small businesses" as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003 (codified at Appendix C to 49 CFR part 209).

The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula under 49 CFR 1201.1–1. FRA is using this definition for the proposed rule. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity.

This proposed rule would apply to the following eligible petitioners: (a) A rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route, or another rail carrier that has a written agreement with a rail carrier or rail carriers that own such infrastructure; (b) a State, group of States, or State-supported joint powers authority or other sub-State governance entity responsible for provision of intercity rail passenger transportation with a written agreement with the rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation; or (c) a State, group of States, or State-supported joint powers authority or other sub-State governance entity responsible for provision of intercity rail passenger transportation and a rail carrier with a written agreement with another rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation. The only petitioners that may be considered a small entity would be small railroads.

This proposed rule is voluntary for all eligible petitioners. Therefore, there are no mandates placed on large or small railroads. In addition, the proposed rule is limited to not more than three long-distance routes operated by Amtrak. Consequently, this proposed rule is not likely to affect a substantial number of small entities, and most likely will not impact any small entities. However, since small entities can bid for service, FRA requests comments on this finding.

A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

Since this program is voluntary, small railroads would not have to take any action. Therefore, this proposed rule would not have any negative economic impact on small entities. Small railroads face the same requirements for entry in the pilot program as other railroads. The railroad must own the infrastructure over which Amtrak operates those long-distance routes described in 49 U.S.C. 24102. Any small entity would likely only bid on a route if it was in its financial interest to do so. Accordingly, any impact on small entities would be positive. The pilot program would allow small railroads to enter a market which currently has substantial barriers.

FRA notes this proposed rule does not disproportionately place any small railroads that are small entities at a significant competitive disadvantage. Small railroads are not excluded from participation if they are statutorily eligible. This proposed rule and the underlying statute concern the potential selection of eligible petitioners to operate an entire long-distance route. If Amtrak uses 30 miles of a small railroad's infrastructure on a route that is 750 miles long, that small railroad could not apply under this proposed rule to operate service only over the 30 mile segment it owns (the small railroad would have to apply to operate service over the whole route). Thus, the ability to bid on a route is not constrained by a railroad's size.

Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rule that duplicates, overlaps with, or conflicts with this proposed rule. FRA invites all interested parties to submit comments, data, and information demonstrating the potential economic impact on small entities that would result from the adoption of the proposed language in this NPRM. FRA particularly encourages small entities that could potentially be impacted by the proposed rule to participate in the public comment process. FRA will consider all comments received during the public comment period for this NPRM when making a final determination of the NPRM's economic impact on small entities.

3. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 and the Office of Management and Budget's (OMB) Implementing Guidance at 5 CFR 1320.3(c):

> collection of information means, except as provided in section 1320.4, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

FRA expects the requirements of this proposed rule would affect less than 10 "persons" as defined in 5 CFR 1320.3(c)(4). Consequently, no information collection submission is necessary, and no approval is being sought from OMB at this time.

4. Environmental Impact

FRA evaluated this NPRM consistent with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA determined this NPRM is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because the proposed rulemaking would not result in a change in current passenger service; instead, the program would only potentially result in a change in the operator of such service. Under section 4(c) and (e) of FRA's Procedures, FRA concludes no extraordinary circumstances exist for this NPRM that might trigger the need for a more detailed environmental review. As a result, FRA finds this NPRM is not a major Federal action significantly affecting the quality of the human environment.

5. Federalism Implications

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 4, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this NPRM consistent with the principles and criteria in Executive Order 13132. This NPRM complies with a statutory mandate, and, thus, is in compliance with Executive Order 13132.

In addition, this NPRM will not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, this NPRM will not have any federalism implications that impose substantial direct compliance costs on State and local governments.

6. Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform (UMR) Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the UMR Act (2 U.S.C. 1532) further requires that:

> before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement [detailing the effect on State, local, and tribal governments and the private sector].

The $100,000,000 has been adjusted to $155,000,000 to account for inflation. This proposed rule would not result in expenditure of more than $155,000,000 by the public sector in any one year, and, thus, preparation of such a statement is not required.

7. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22, 2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including any notice of inquiry, advance notice of proposed rulemaking, and notice of proposed rulemaking that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) the Administrator of the OMB Office of Information and Regulatory Affairs designates as a significant energy action. FRA evaluated this NPRM consistent with Executive Order 13211. FRA determined this NPRM will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA concludes this regulatory action is not a "significant energy action" under Executive Order 13211.

8. Privacy Act Information

Interested parties should be aware that anyone can search the electronic form of all written communications and comments received into any agency docket by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on Apr. 11, 2000, 65 FR 19477, or you may visit *http://www.dot.gov/privacy.html*. Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

List of Subjects in 49 CFR Part 269

Railroads, Railroad employees.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to revise part 269 of chapter II, subtitle B, title 49 of the Code of Federal Regulations to read as follows:

PART 269—COMPETITIVE PASSENGER RAIL SERVICE PILOT PROGRAM

Sec.
269.1 Purpose.
269.3 Limitations.
269.5 Definitions.
269.7 Petitions.
269.9 Bid process.
269.11 Evaluation.
269.13 Award.
269.15 Access to facilities; employees.
269.17 Cessation of service.

Authority: Sec. 11307, Pub. L. 114–94; 49 U.S.C. 24711; and 49 CFR 1.89.

§ 269.1 Purpose.

The purpose of this part is to carry out the statutory mandate in 49 U.S.C. 24711 requiring the Secretary to implement a pilot program for competitive selection of eligible petitioners in lieu of Amtrak to operate not more than three long-distance routes.

§ 269.3 Limitations.

(a) *Route limitations.* The pilot program this part implements is available for not more than three Amtrak long-distance routes.

(b) *Time limitations.* An eligible petitioner awarded a contract to provide passenger rail service under the pilot program this part implements shall only provide such service for a period not to exceed four years from the date of commencement of service. The Administrator has the discretion to renew such service for one additional operation period of four years.

§ 269.5 Definitions.

As used in this part—

Act means the Fixing America's Surface Transportation Act (Public Law 114–94 (Dec. 4, 2015)).

Administrator means the Federal Railroad Administrator, or the Federal Railroad Administrator's delegate.

Amtrak means the National Railroad Passenger Corporation.

Eligible petitioner means one of the following entities, other than Amtrak, that has submitted a petition to FRA under § 269.7:

(1) A rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route, or another rail carrier that has a written agreement with a rail carrier or rail carriers that own such infrastructure;

(2) A State, group of States, or State-supported joint powers authority or other sub-State governance entity responsible for providing intercity rail passenger transportation with a written agreement with the rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation; or

(3) A State, group of States, or State-supported joint powers authority or other sub-State governance entity responsible for providing intercity rail passenger transportation and a rail carrier with a written agreement with another rail carrier or rail carriers that own the infrastructure over which Amtrak operates a long-distance route and that host or would host the intercity rail passenger transportation.

File and Filed mean submission of a document under this part to FRA at *PassengerRail.Liaison@dot.gov* on the date the document was emailed to FRA.

Financial plan means a plan that contains, for each Federal fiscal year fully or partially covered by the bid:

(1) An annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds) attributable to the route; and

(2) A statement of the assumptions underlying the financial plan's contents.

FRA means the Federal Railroad Administration.

Long-distance route means those routes described in 49 U.S.C. 24102(5) and operated by Amtrak on the date of enactment of the Act.

Operating plan means a plan that contains, for each Federal fiscal year fully or partially covered by the bid:

(1) A complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between each city-pair proposed to be served; and

(2) A statement of the assumptions underlying the operating plan's contents.

§ 269.7 Petitions.

(a) *In general.* An eligible petitioner may petition FRA to provide intercity passenger rail transportation over a long-distance route in lieu of Amtrak for a period of time consistent with the time limitations described in § 269.3(b).

(b) *Petition requirements.* Eligible petitioners must:

(1) File the petition with FRA no later than 60 days after FRA publishes the competitive passenger rail service pilot program final rule;

(2) Describe the petition as a "Petition to Provide Passenger Rail Service under 49 CFR part 269"; and

(3) Describe the long-distance route or routes over which the eligible petitioner wants to provide intercity passenger rail transportation and the Amtrak service that the eligible petitioner wants to replace.

§ 269.9 Bid process.

(a) *Notification.* FRA will notify the eligible petitioner and Amtrak of receipt of a petition filed with FRA and will publish a notice of receipt in the **Federal Register** not later than 30 days after FRA's receipt of such petition.

(b) *Bid requirements.* An eligible petitioner that has filed a timely petition under § 269.7 and Amtrak, if Amtrak desires, may file a bid with FRA not later than 120 days after FRA publishes the notice of receipt in the **Federal Register** under § 269.9(a). Each such bid must:

(1) Provide FRA with sufficient information to evaluate the level of service described in the proposal, and to evaluate the proposal's compliance with the requirements in § 269.13(b);

(2) Describe how the bidder would operate the route.

(i) This description must include, but is not limited to, an operating plan, a financial plan and, if applicable, any agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the bidder.

(ii) In addition, if the bidder intends to generate any revenues from ancillary activities (*i.e.,* activities other than passenger transportation, accommodations, and food service) as part of its proposed operation of the route, then the bidder must fully describe such ancillary activities and identify their incremental impact in all relevant sections of the operating plan and the financial plan, and on the route's performance, together with the assumptions underlying the estimates of such incremental impacts;

(3) Describe what passenger equipment the bidder would need, including how it would be procured;

(4) Describe in detail, including amounts, timing, and intended purpose, what sources of Federal and non-Federal funding the bidder would use, including but not limited to any Federal or State operating subsidy and any other Federal or State payments;

(5) Contain a staffing plan describing the number of employees the bidder needs to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid;

(6) Describe the capital needs for the passenger rail service;

(7) Describe in detail the bidder's plans for meeting all FRA safety requirements, including equipment, employee, and passenger parameters;

(8) Describe, for each Federal fiscal year fully or partially covered by the bid, a projection of the passenger rail service route's total revenue, total costs, total contribution/loss, and net cash used in operating activities per passenger-mile attributable to the route;

(9) Describe how the passenger rail service would meet or exceed the performance required of or achieved by Amtrak on the applicable route during the last fiscal year. At a minimum, this description must include, for each Federal fiscal year fully or partially covered by the bid a projection of the route's expected on-time performance and train delays;

(10) Analyze the reasonably foreseeable effects, both positive and negative, of the passenger rail service on other intercity passenger rail services; and

(11) Describe the bidder's compliance with all applicable Federal environmental laws.

(c) *Supplemental information.* (1) FRA may request supplemental information from a bidder and/or Amtrak if FRA determines it needs such information to evaluate a bid.

(2) FRA's request may seek information about the costs related to the service that Amtrak would still incur following the cessation of service, including the increased costs for other services.

(3) FRA will establish a deadline by which the bidder and/or Amtrak must file the supplemental information with FRA.

§ 269.11 Evaluation.

(a) *Evaluation.* FRA will select a winning bidder by evaluating the bids based on the requirements of this part.

(b) *Notification.* (1) Upon selecting a winning bidder, FRA will publish a notice in the **Federal Register** describing the identity of the winning bidder, the long-distance route the bidder will operate, a detailed justification explaining why FRA selected the bid, and any other information the Administrator determines appropriate.

(2) The notice under this paragraph will be open for public comment for 30 days after the date FRA selects the bid.

§ 269.13 Award.

(a) *Award.* FRA will execute a contract with a winning bidder that is not or does not include Amtrak, consistent with the requirements of this section and as FRA may otherwise require, not later than 270 days after the bid deadline established by § 269.9(b).

(b) *Contract requirements.* Among other things, the contract between FRA and a winning bidder that is not or does not include Amtrak must:

(1) Award to the winning bidder the right and obligation to provide intercity passenger rail transportation over that route subject to such performance standards as FRA may require for a duration consistent with § 269.3(b);

(2) Award to the winning bidder an operating subsidy, as determined by FRA, subject to the availability of funding, for the first year at a level that does not exceed 90 percent of the level in effect for that specific route during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation;

(3) State that any award of an operating subsidy is made annually, is subject to the availability of funding, and is based on the amount calculated under § 269.13(b)(2), adjusted for inflation;

(4) Condition the operating and subsidy rights upon the winning bidder providing intercity passenger rail transportation over the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award;

(5) Condition the operating and subsidy rights upon the winning bidder's compliance with performance standards FRA may require, but which, at a minimum, must meet or exceed the performance required of or achieved by Amtrak on the applicable route during the last fiscal year; and

(6) Subject the winning bidder to the grant conditions established by 49 U.S.C. 24405.

(c) *Publication.* The winning bidder shall make their bid available to the public after the bid award with any appropriate redactions for confidential or proprietary information.

§ 269.15 Access to facilities; employees.

(a) *Access to facilities.* If the award under § 269.13 is made to an eligible petitioner, Amtrak must provide that eligible petitioner access to the Amtrak-owned reservation system, stations, and facilities directly related to operations of the awarded route(s).

(b) *Employees.* The employees of any person, except as provided in a collective bargaining agreement, an eligible petitioner uses in the operation of a route under this part shall be considered an employee of that eligible petitioner and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak.

(c) *Hiring preference.* The winning bidder must provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan the winning bidder submits.

§ 269.17 Cessation of service.

(a) If an eligible petitioner awarded a route under this part ceases to operate the service or fails to fulfill its obligations under the contract required under § 269.13, the Administrator, in collaboration with the Surface Transportation Board, shall take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including the installment of an interim service and re-bidding the contract to operate the service.

(b) In re-bidding the contract, the entity providing service must either be Amtrak or an eligible petitioner.

Sarah E. Feinberg,

Administrator.

[FR Doc. 2016–14698 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2016–0002; 4500030113]

RIN 1018–BA95

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Elfin-Woods Warbler

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the elfin-woods warbler (*Setophaga angelae*) under the Endangered Species Act (Act). In total, approximately 10,977 hectares (ha) (27,125 acres (ac)) in the Maricao, San Germán, Sabana Grande, Yauco, Río Grande, Canovanas, Las Piedras, Naguabo, Ceiba, Cayey, San Lorenzo, Guayama, and Patillas Municipalities in Puerto Rico fall within the boundaries of the proposed critical habitat designation. If we finalize this rule as proposed, it would extend the Act's protections to this species' critical habitat. We also announce the availability of a draft economic analysis for the proposed designation.

DATES: We will accept comments on the proposed rule or draft economic analysis that are received or postmarked on or before August 22, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 8, 2016.

ADDRESSES: *Written comments:* You may submit comments on the proposed rule or draft economic analysis by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter Docket No. FWS–R4–ES–2016–0002, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2016–0002; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Document availability: The draft economic analysis is available at *http://www.fws.gov/caribbean,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2016–0002, and at the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates, plot points, or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/caribbean,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2016–0002, and at the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Marelisa Rivera, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; telephone 787–851–7297; facsimile 787–851–7440. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, when we determine that a species is endangered or threatened, we must designate critical habitat to the maximum extent prudent and determinable. Designations of critical habitat can only be completed by issuing a rule.

This document consists of: A proposed rule to designate critical habitat for the elfin-woods warbler. We have determined that designating critical habitat is both prudent and determinable for the elfin-woods warbler, and we propose a total of approximately 10,977 ha (27,125 ac) of critical habitat for the species in Puerto Rico. We proposed to list the elfin-woods warbler as a threatened species under the Act on September 30, 2015 (80 FR 58674). Elsewhere in this issue of the **Federal Register** we have published a final rule to list the elfin-woods warbler as threatened with a 4(d) rule.

The basis for our action. Section 4(a)(3) of the Act requires the Secretary to designate critical habitat, to the maximum extent prudent and determinable, for an endangered or threatened species at the time it is listed. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

We prepared a draft economic analysis of the proposed designation of critical habitat. In order to consider economic impacts, we have prepared a draft economic analysis for the proposed critical habitat designation. We hereby announce the availability of the draft economic analysis and seek public review and comment.

We will seek peer review. We are seeking comments from independent specialists to ensure that our critical habitat proposal is based on scientifically sound data and analyses. We invite these peer reviewers to comment on our specific assumptions and conclusions in this proposal to designate critical habitat. Because we will consider all comments and information we receive during the comment period, our final designation may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

2. Specific information on:

a. The amount and distribution of the elfin-woods warbler's habitat;

b. What areas, that were occupied at the time of listing (*i.e.*, are currently occupied) and that contain the physical and biological features essential to the conservation of the species, should be included in the designation and why;

c. Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

d. What areas not occupied at the time of listing (*i.e.*, not currently occupied) are essential for the conservation of the species and why.

3. Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

4. Information on the projected and reasonably likely impacts of climate change on the elfin-woods warbler and proposed critical habitat.

5. Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding areas that exhibit these impacts.

6. Information on the extent to which the description of economic impacts in the draft economic analysis (DEA) is a reasonable estimate of the likely economic impacts.

7. The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

8. Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

9. Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

All comments submitted electronically via *http://www.regulations.gov* will be presented on the Web site in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

All previous Federal actions are described in the proposal to list the elfin-woods warbler as a threatened species under the Act published on September 30, 2015 (80 FR 58674).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

1. The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

a. Essential to the conservation of the species, and

b. Which may require special management considerations or protection; and

2. Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In defining those physical and biological features within an area, we focus on the specific features that support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential for the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species, the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the listed species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat, as applicable under the proposed 4(d) rule for this species (80 FR 58674; September 30, 2015). Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. With the listing of the elfin-woods warbler, published elsewhere in this issue of the **Federal Register**, these protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

1. The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or
2. Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Service may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of "critical habitat."

As discussed in the proposed listing rule, there is currently no imminent threat of take attributed to collection or vandalism for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, we determine if such designation of critical habitat would not be beneficial to the species. As discussed in our proposed listing rule, we have determined that the present or threatened destruction, modification, or curtailment of a species' habitat or range is a threat to the elfin-woods warbler. Furthermore, as discussed below, we have determined that three areas meet the Act's definition of "critical habitat."

Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and would be beneficial, we find that designation of critical habitat is prudent for the elfin-woods warbler.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the elfin-woods warbler is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

1. Data sufficient to perform required analyses are lacking, or
2. The biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat."

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

At the time of the proposed listing, we found that critical habitat was not determinable because the specific information sufficient to perform the required analysis of the impacts of the designation was lacking. We have since acquired the appropriate information necessary to perform the impacts analysis. We have also reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and have now led us to conclude that the designation of critical habitat is determinable for the elfin-woods warbler.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features (PBFs) that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

- Space for individual and population growth and for normal behavior;
- Food, water, air, light, minerals, or other nutritional or physiological requirements;
- Cover or shelter;
- Sites for breeding, reproduction, or rearing (or development) of offspring; and
- Habitats that are protected from disturbance or are representative of the historic, geographical and ecological distributions of a species.

We derive the specific PBFs essential for the elfin-woods warbler from studies of its habitat, ecology, and life history as described below. Additional information can be found in the proposed listing rule (80 FR 58674; September 30, 2015). We have determined that the following PBFs are essential to the conservation of the elfin-woods warbler.

Space for Individual and Population Growth and for Normal Behavior

The elfin-woods warbler is an endemic Puerto Rican bird with a very limited distribution, and it is typically observed in forested habitats with closed canopy and well-developed understory in higher elevations. Based on the best available information, there are only two known populations, one in eastern and one in western Puerto Rico. The eastern population occurs at El Yunque National Forest (EYNF) located within the Sierra de Luquillo mountains. The species' primary habitat at EYNF consists of the dwarf forest (Kepler and Parkes 1972, pp. 3–5) and the Palo Colorado forest (Wiley and Bauer 1985, pp. 12–18). The dwarf forest falls within the lower montane rain forest life zone (Ewel and Whitmore 1973, p. 49). It is found on exposed peaks with short, stunted vegetation above 900 meters (m) (2,952 feet (ft)) in elevation (Weaver 2012, p. 58). The dwarf forest is characterized by a single story of trees that range from 1 to 6 m (3 to 19 ft) in height, depending on exposure (Weaver 2012, p. 58). However, trees located on rocky summits are limited to 2 to 3 m (6 to 10 ft) in height. Although no tree species is confined to this type of forest, only a few species, such as *Podocarpus coriaceus* (no common name), *Ocotea spathulata* (nemocá), and *Ilex sintenisii* (no common name), are adapted to survive on the exposed summits of this forest (Weaver 2012, p. 58). The dwarf forest is also characterized by the abundance of mosses, epiphytes, and liverworts that cover the majority of the forest surface (Lugo 2005, p. 514). The Palo Colorado forest occurs on gentle slopes within the lower montane wet and lower montane rain forest life zones, approximately between 600 and 900 m (1,968 and 2,952 ft) in elevation (Weaver 2012, p. 1; U.S. Forest Service (USFS), no date). This forest type mainly consists of fast-growing trees with heights not exceeding more than 24 m (78 ft) (Lugo 2005, p. 506). This forest type is essentially an upland swamp of short-statured trees with shallow root systems (USFS, not date). Some of the most common tree species are *Cyrilla racemiflora* (Palo Colorado), *Prestoea montana* (Sierra palm), *Ocotea spathulata*, and *Croton poecilanthus* (sabinón) (Weaver 2012, p. 55). The understory of the Palo Colorado forest is dominated by grasses, bromeliads, ferns, and sedges (Lugo 2005, p. 508).

The western population of the elfin-woods warbler is located within the Maricao Commonwealth Forest (MCF) and adjacent agricultural lands. The MCF is located within the Cordillera Central (central mountain range) of Puerto Rico. The primary habitat of the western population consists of the *Podocarpus* forest, exposed ridge woodland, and timber plantation forests (González 2008, pp. 15–16). The *Podocarpus* forest is located on the slopes and highest peaks (600–900 m (1,968–2,952 ft)) within the lower montane wet forest life zone (DNR 1976, p. 185; Ewel and Whitmore 1973, p. 41). At the MCF, this type of forest grows on deep serpentine soils and is dominated by *Podocarpus coriaceus* trees; a continuous closed canopy of approximately 20 m (66 ft) of height; and a well-developed understory composed of tree ferns (*Cyathea* spp.), Sierra palm, and vines (Tossas and Delannoy 2001, pp. 47–53; Anadón-Irizarry 2006, p. 53; González 2008, pp. 15–16). The exposed ridge woodland forest is found in valleys, slopes, and shallow soils with a more or less continuous canopy (González 2008, pp. 15–16). These forest associations are found at elevations ranging from 550 to 750 m (1,804 to 2,460 ft) within the subtropical wet forest life zone (DNR 1976, p. 185; Ricart-Pujals and Padrón-Vélez 2010, p. 9). The timber plantation forest is found in elevations ranging from 630 to 850 m (2,066 to 2,788 ft) within the subtropical wet forest and the subtropical moist forest life zones (DNR 1976, p. 185). This habitat is dominated by *Calophyllum calaba* (María trees), *Eucalyptus robusta* (eucalyptus), and *Pinus caribaea* (Honduran pine) planted in areas that were deforested for agriculture (Delannoy 2007, p. 9; González 2008, p. 5).

In the privately owned lands adjacent to the MCF, the species has been reported mainly within secondary forests (both young and mature secondary forests) and shade-grown coffee plantations (González 2008, pp. 15–16). The young secondary forests are less than 25 years old with an open canopy of approximately 12–15 m (40–50 ft) in height (González 2008, p. 6). These forests are found within the subtropical moist and subtropical wet forest life zones at elevations ranging from 300 to 750 m (984 to 2,460 ft) (González 2008, p. 59; Puerto Rico Planning Board 2015, no page number), and cover approximately 98 percent of the MCF (DNR 1976, p. 185). The understory is well-developed and dominated by grasses, vines, and other early successional species (González 2008, p. 6). Mature secondary forests are over 25 years old, developing in humid and very humid, moderate to steep slopes. These forests are characterized by a closed canopy of approximately 20–30 m (66–100 ft) in height and sparse to abundant understory (González 2008, p. 6). The shade-grown coffee plantations are covered with tall mature trees, dominated mostly by *Inga vera* (guaba), *Inga laurina* (guamá), *Andira inermis* (moca), and *Guarea guidonia* (guaraguao) trees, reaching 15–20 m (50–66 ft) in height, with an open understory without grasses (González 2008, p. 6). These shade-grown coffee plantations, located adjacent to the MCF at elevations between 300 and 600 m (984 and 1,968 ft), extend the vegetation cover and provide habitat for the species (González 2008, p. 59).

Limited information exists about the species' nesting sites and behavior. However, it is known that the elfin-woods warbler utilizes these forested habitats for its nest construction. According to the habitat suitability model developed for the species, all of the habitats described above occur within the intermediate to very high adequacy category (Colón-Merced 2013, p. 57). This model was developed based on a combination of elevation and vegetation cover from areas where the species is known to occur. In addition, as mentioned above, the species appears to be associated with high elevations and is seldom observed in elevations lower than 300 m (984 ft). The habitat types identified above are the only habitats that the species is known to occupy and use for normal behavior and that support the elfin-woods warbler's life-history processes. Thus, the protection and maintenance of these forested habitat features are essential for rearing, growth, foraging, migration, and other normal behaviors of the species.

Therefore, based on the available information describing the habitat used by the elfin-woods warbler, we identified the dwarf, Palo Colorado, *Podocarpus,* exposed ridge woodland, and timber plantation forests; secondary forests; and shade-grown coffee plantations as PBFs essential to the conservation of the species.

Cover or Shelter

As described above in "Space for Individual and Population Growth and for Normal Behavior," the elfin-woods warbler occurs in higher densities within the dwarf, Palo Colorado, *Podocarpus,* exposed ridge woodland, and timber plantation forests; secondary forests; and shade-grown coffee plantations (Delannoy 2007, p. 14; Anadón-Irizarry 2006, p. 23; González 2008, pp. 15–16; Arendt *et al.* 2013, p. 8). The vegetation association and structure (*i.e.,* tree species and forest structure) of these forest types provide cover for nesting and the rearing of offspring (see "Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring," below). Therefore, dwarf, Palo Colorado, *Podocarpus,* exposed ridge woodland, and timber plantation forests; secondary forests; and shade-grown coffee plantations provide cover and shelter, and are PBFs essential for the persistence and survival of the elfin-woods warbler.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

There is little quantitative information about the elfin-woods warbler's breeding, reproduction, and offspring development. However, based on the best available information, shaded and forested corridors are features that are essential to accommodate the species' normal behaviors including breeding, reproduction, and rearing. The elfin-woods warbler's breeding occurs between March and June (Raffaele *et al.* 1998, p. 406). The first elfin-woods warbler nest was found in 1985 at EYNF (Arroyo-Vázquez 1992, p. 362). At that time, no detailed information on the species' breeding biology was gathered (Arroyo-Vázquez 1992, p. 362). Later, Arroyo-Vázquez (1992) found two elfin-woods warbler nests in the MCF area. Both nests were found within the *Podocarpus* forest, placed in trees among dry leaf litter trapped in vegetation or vines at heights between 1.3 and 7.6 m (4.3 and 25.0 ft) (Arroyo-Vázquez 1992, pp. 362–364). Raffaele *et al.* (1998, p. 406) described the species' nest as a compact cup, usually close to the trunk and well hidden among epiphytes of small trees. Clutch size is usually two to three eggs, but there have been observations of nests that contain broods of up to four nestlings (Raffaele *et al.* 1998, p. 406; Rodríguez-Mojica 2004, p. 22). In 2004, Rodríguez-Mojica (2004, p. 22) reported the first nesting event in a cavity of a rotten *Cyrilla racemiflora* stump in the MCF area. The nest was placed about 7 m (23 ft) above ground and 6 centimeters (cm) (2 inches (in)) deep from the lower border of the irregular rim of the stump. Nesting events in cavities are not a common behavior of warblers, either in the tropics or in North America (Rodríguez-Mojica 2004, p. 22). Therefore, the discovery of a warbler nest in a tree cavity is significant, as no other warblers have been reported using such a site (Rodríguez-Mojica 2004, p. 23).

Therefore, based on the above information, we identified the *Podocarpus* and the Palo Colorado forest associations (shaded and forested corridors) as PBFs essential to the conservation of the elfin-woods warbler as they provide habitat for breeding, reproduction, and rearing.

In summary, the PBFs essential for the conservation of the elfin-woods warbler are:

1. Wet and rain montane forest types:

a. *Podocarpus* forest at elevations between 600 and 900 m (1,968 and 2,952 ft) with continuous closed canopy of 20 m (66 ft) in height, dominated by *Podocarpus coriaceus* trees with well-developed understory.

b. Dwarf forest at elevations above 900 m (2,952 ft) with a single story of trees between 1 and 6 m (3 and 19 ft) in height, with an understory of mosses, epiphytes, and liverworts.

c. Palo Colorado forest at elevations between 600 and 900 m (1,968 and 2,952 ft) with a closed canopy of approximately 20 m (66 ft) and an understory dominated by grasses, ferns, bromeliads, and sedges.

2. Forested habitat areas that contain:

a. Active shade-grown coffee plantations or forested agricultural lands dominated primarily by native vegetation; or

b. Abandoned coffee plantations or agricultural lands with native forest cover and a closed canopy.

3. Forested habitat (at elevations between 300 and 850 m (984 and 2,788 ft)) not contained within the habitats described in PBF 1 or PBF 2:

a. Exposed ridge woodland forest found in valleys, slopes, and shallow soils with a more or less continuous canopy at elevations ranging from 550 to 750 m (1,804 to 2,460 ft);

b. Timber plantation forest at elevations ranging from 630 to 850 m (2,066 to 2,788 ft); or

c. Secondary forests dominated by native tree species with a closed canopy of approximately 20–30 m (66–100 ft) in height at elevations ranging from 300 to 750 m (984 to 2,460 ft).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain PBFs which are essential to the conservation of the species and which may require special management considerations or protection.

The occupied units we are proposing to designate as critical habitat for the elfin-woods warbler will require some level of management to address the current and future threats to the PBFs. The proposed Maricao unit contains privately owned agricultural lands in which various activities may affect one or more of the PBFs. The features of this unit essential to the conservation of this species may require special management considerations or protection to reduce the following threats or potential threats that may result in changes in the composition or abundance of vegetation inside this unit: Loss, fragmentation, and degradation of habitat due to unsustainable agricultural practices; hurricanes; and human-induced fires. The features of the El Yunque unit may require special management considerations or protection to reduce threats or potential threats from hurricanes and human-induced fires, which may be exacerbated by the effects of climate change.

Management activities that could ameliorate these threats or potential threats include but are not limited to: The candidate conservation agreement (CCA) signed in 2014 among the Service, U.S. Forest Service, and Puerto Rico Department of Natural and Environmental Resources (PRDNER) to implement conservation practices for the benefit of the elfin-woods warbler and their habitat in EYNF and MCF (USFWS 2014); implementation of conservation agreements with private land owners to restore habitat, and to minimize habitat disturbance, fragmentation, and destruction; and development and implementation of management plans for other protected lands where the species is found.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. We also consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species.

Because of the vulnerability associated with small populations, limited distributions, or both, conservation of species such as the elfin-woods warbler should include the protection of both existing and potential habitat, and the establishment of new populations to reduce or eliminate such vulnerability. Therefore, for the elfin-woods warbler, in addition to areas occupied by the species at the time of listing, we also are proposing to designate habitat outside the geographical area occupied by the species at the time of listing that was historically occupied, but is presently unoccupied, because it is essential for the conservation of the species.

Sources of data for the elfin-woods warbler and its habitat include reports on assessments and surveys throughout the species' range, peer-reviewed scientific and academic literature, habitat suitability models, personal communications with the species experts (*e.g.,* Colón-Merced 2013; González 2008; Anadón-Irizarry 2006; Delannoy 2007; Arroyo-Vázquez 1992; Pérez-Rivera 2014, pers. comm.); and information from Service biologists. Other sources include databases maintained by Commonwealth and Federal agencies regarding Puerto Rico (such as elevation data, land cover data, aerial imagery, protected areas, and U.S. Geological Survey (USGS) topographic maps). Critical habitat units were then mapped using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a geographic information system (GIS) program.

To further refine the boundaries, we used an existing elfin-woods warbler habitat suitability model (Colón-Merced 2013, p. 51). This model utilized variables such as elevation and vegetation cover to predict suitable habitat for this species in Puerto Rico (Colón-Merced 2013, p. 45). This model has been validated in several locations in Puerto Rico (BirdLife and SOPI, final report in progress).

In order to identify essential habitat within private lands adjacent to the MCF, we established a buffer zone of 500 m (0.31 mile (mi)) from the boundary line of the MCF to include forested areas in abandoned and active shade-grown coffee plantations where the elfin-woods warbler has been reported on the north, east, and west sides of the forest (González 2008, p. 59). We used 500 m (0.31 mi) as our buffer zone because our best understanding of the available information (*e.g.,* spatial data and on-the-ground data) is that this area encompasses suitable habitat that supports the conservation of the elfin-woods warbler.

Areas Occupied at the Time of Listing

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as: An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals). The elfin-woods warbler tends to exhibit high site-fidelity (Anadón-Irizarry 2006, p. 6; Waide 1995, p. 11). However, the species can disperse to take advantage of changing conditions through space and time (*e.g.,* during hurricanes; Waide 1995, p. 16).

The proposed critical habitat designation focuses on occupied forested areas within the species' historical range containing the PBFs that will allow for the maintenance and expansion of existing populations and for possible new populations. Two areas meet the definition of areas occupied by the species at the time of listing: (1) EYNF; and (2) MCF and adjacent private lands to the north, east, and west.

Areas Outside of the Geographic Range at the Time of Listing

For areas not occupied by the species at the time of the proposed listing (September 30, 2015), we must demonstrate that the areas are essential for the conservation of the species. To determine if these areas are essential for the conservation of the elfin-woods warbler, we considered:

- The importance of the area to the overall status of the species to prevent extinction and contribute to the species' conservation;
- Whether the area contains the necessary habitat to support the species;
- Whether the area provides connectivity between occupied sites for genetic exchange; and
- Whether a population of the species could be reestablished in the area.

The Carite Commonwealth Forest (CCF) is within the historical range of the elfin-woods warbler, within the Sierra de Cayey mountains in southeast Puerto Rico (Silander *et al.* 1986, p. 178); the Sierra de Cayey mountains are connected to the Cordillera Central mountains, which extend from Aibonito in the east to Maricao in the west of Puerto Rico (Monroe 1980, p. 16). However, the species has not been reported in CCF in recent years (Anadón-Irizarry 2006, p. 34; Pérez-Rivera 2014, pers. comm.; Aide and Campos 2016).

The CCF has been managed for conservation by the PRDNER since 1975 (previously Department of Natural Resources (DNR); DNR 1976, p. 169). This forest covers about 2,695 ha (6,660 ac), and ranges between 250 and 903 m (820 and 2,962 ft) in elevation (DNR 1976, p. 168). The mean annual precipitation is 225 cm (88.5 in), and the mean temperature is 22.7 degrees Celsius (°C) (72.3 degrees Fahrenheit (°F)) (DNR 1976, p. 169; Silander *et al.* 1986, p. 183).

The CCF contains the following forest types: Dwarf forest, Palo Colorado forest, timber plantation forest, and secondary forests. These are the same forest types used by the elfin-woods warbler in EYNF and MCF. These forest types are located within the same life zones in CCF as they are in EYNF and MCF (Ewel and Whitmore 1973, p. 74). The dwarf forest is found on exposed peaks and ridges of Cerro La Santa, above 880 m (2,887 ft) in elevation, occupying approximately 10.1 ha (24.9 ac) of the forest (Silander *et al.* 1986, p. 178). The dwarf forest vegetation is characterized by gnarled trees less than 7 m (23 ft) tall (Ewel and Whitmore 1973, p. 45). This habitat is dominated by *Tabebuia schumanniana* (roble colorado), *Tabebuia rigida* (roble de sierra), *Ocotea spathulata,* and *Henriettea squamulosum* (no common name) (Weaver *et al.* 1986, p. 80; Silander *et al.* 1986, p. 191). The Palo Colorado forest occupies 252.9 ha (625 ac) of the CCF (Silander *et al.* 1986, p. 188). This forest type is within the upper montane forest in slopes and mountain peaks at elevations from 700 to 850 m (2,297 to 2,788 ft). The most common tree species are *Inga fagifolia* (no common name), *Micropholis chrysophylloides* (no common name), *Prestoea montana,* and *Cyrilla racemiflora.* Tree height varies from 14 to 15 m (46 to 50 ft) at lower slopes, and from 6 to 8 m (20 to 26 ft) at mountain peaks (Silander *et al.* 1986, p. 188). The timber plantation forest occupies about 400.5 ha (989.0 ac) of the CCF (Silander *et al.* 1986, p. 188). Timber plantation forests are dominated by *Eucalyptus robusta* and *Calophyllum antillanum* (no common name) (Silander *et al.* 1986, p. 196). The secondary forest occupies 11.3 ha (28.0 ac) of the CCF (Silander *et al.* 1986, p. 188).

Although studies conducted by Anadón-Irizarry (2006, 2014) between 2003–2004 and 2012–2013 failed to detect the species within the CCF, she suggested the possibility that the species may still be present in isolated pockets of forest that were not searched during the studies (Delannoy 2007, p. 22). The apparent persistent and relatively sedentary behavior of this species, in inhabiting certain small and isolated pockets of the forest, might have led these authors to suggest that CCF may harbor undetected elfin-woods warblers (Anadón-Irizarry 2006, p. 54; Delannoy 2007, pp. 22–23; Pérez-Rivera 2014, pers. comm.). However, surveys contracted by the Service and conducted between March and April 2016, did not detect the species within the CCF and adjacent private lands (Aide and Campos 2016). In any case, we still believe that CCF contains habitat that may be suitable for the elfin-woods warbler due to its similarity in elevation, climatic conditions, and vegetation associations with EYNF and MCF (Colón-Merced 2013, p. 57). This area contains habitat with "intermediate to very high adequacy" (favorable to optimal combination of elevation and vegetation cover regarding the known elfin-woods warbler habitat) according to the habitat suitability model for the species (Colón-Merced 2013, p. 57).

The CCF provides the necessary habitat to support the elfin-woods warbler in the easternmost part of the Cordillera Central. The presence of suitable habitat characteristics and historic occurrence of the species within the CCF increase the opportunity for future reestablishment of a population of elfin-woods warblers in this forest. In addition, the connectivity between MCF and CCF through the Cordillera Central is expected to result in genetic exchange between the existing MCF populations and CCF populations that may be reestablished in the future. It should be noted that while there is connectivity between MCF and CCF, the EYNF is within the Sierra de Luquillo mountains with lower elevation and development between the mountain ranges that significantly reduces connectivity between CCF and EYNF. For the above-mentioned reasons, we conclude that suitable habitat within the CCF meets the four considerations described above, and is therefore essential for the conservation of the elfin-woods warbler.

In summary, we are proposing to designate as critical habitat two units that we have determined are occupied at the time of listing and contain sufficient elements of PBFs to support life-history processes essential to the conservation of the species, and one unit outside of the geographical area occupied at the time of listing that we have determined is essential for the conservation of the species. Some units contain all of the identified elements of PBFs and support multiple life-history processes, and some units contain only some of those elements.

The proposed critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the Proposed Regulation Promulgation section. We include more detailed information on the boundaries of the proposed critical habitat designation in the individual unit descriptions below. We will make the coordinates, plot points, or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2016–0002, on our Internet site at *http://www.fws.gov/caribbean,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PBFs for the elfin-woods warbler. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PBFs in the adjacent critical habitat.

Proposed Critical Habitat Designation

We are proposing to designate approximately 10,977 ha (27,125 ac) in three units as critical habitat for the elfin-woods warbler: Unit 1: Maricao, Unit 2: El Yunque, and Unit 3: Carite. Two units (Marico and El Yunque) are currently occupied and one unit (Carite) is currently unoccupied. Table 1 shows the land ownership and approximate size of each of the proposed critical habitat units.

TABLE 1—LOCATION, OCCUPANCY STATUS, OWNERSHIP, AND SIZE (HECTARES (ACRES)) OF PROPOSED ELFIN-WOODS WARBLER CRITICAL HABITAT UNITS.

Unit	Occupied	Municipality	Land ownership in hectares (acres)			Total area hectares (acres)
			Federal	Common-wealth	Private	
1: Maricao	Yes	Maricao, San Germán, Sabana Grande, Yauco.	0	3,442 (8,506)	1,663 (4,109)	5,105 (12,615).
2: El Yunque	Yes	Río Grande, Canovanas, Las Piedras, Naguabo, Ceiba.	4,626 (11,430)	0	0	4,626 (11,430).
3: Carite	No	Cayey, San Lorenzo, Guayama, Patillas.	0	1,246 (3,080)	0	1,246 (3,080).
Totals			4,626 (11,430)	4,688 (11,586)	1,663 (4,109)	10,977 (27,125).

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units below.

Unit 1: Maricao

Unit 1 consists of a total of 5,105 ha (12,615 ac). Approximately 3,442 ha (8,506 ac) are owned by the Commonwealth and managed by the PRDNER and 1,663 ha (4,109 ac) are in private ownership. This unit is located within the municipalities of Maricao, San Germán, Sabana Grande, and Yauco. This unit encompasses the majority of the Maricao Commonwealth Forest. The unit is located north of State Road PR–2, south of State Road PR–105, and approximately 105 kilometers (km) (65 miles (mi)) west of the International Airport Luis Muñoz Marin. This unit is within the geographical area occupied by the elfin-woods warbler at the time of listing. This unit contains all of the PBFs. The PBFs in this unit may require special considerations or protection to address the following threats or potential threats that may result in changes in the composition or abundance of vegetation within this unit: Loss, fragmentation, and degradation of habitat due to unsustainable agricultural practices; hurricanes; and human-induced fires. This unit represents a core population for the species and will likely contribute to range expansion of the elfin-woods warbler.

Unit 2: El Yunque

Unit 2 consists of 4,626 ha (11,430 ac) of federally owned land managed by the U.S. Forest Service (EYNF). It is located within the municipalities of Río Grande, Canovanas, Las Piedras, Naguabo, and Ceiba. The unit is located within EYNF located east of State Road PR–186, north of State Road PR–31, and approximately 24 km (15 mi) east of the International Airport Luis Muñoz Marin. This unit is within the geographical area occupied by the elfin-woods warbler at the time of listing. This unit contains PBFs 1(b) and 1(c) (see *Physical or Biological Features,* above). The PBFs in this unit may require special considerations or protection to reduce threats or potential threats from hurricanes and human-induced fires, which may be exacerbated by the effects of climate change. This unit represents a core population of the species and helps to maintain the elfin-woods warbler's geographical range.

Unit 3: Carite

Unit 3 consists of 1,246 ha (3,080 ac) of lands owned by the Commonwealth and managed by the PRDNER. It is located within the municipalities of Cayey, San Lorenzo, Guayama, and Patillas. The unit is located within the CCF west of State Road PR–7740 and State Road PR–184 that runs within the CCF, and approximately 37 km (23 mi) south of the International Airport Luis Muñoz Marin. This unit was not occupied by the elfin-woods warbler at the time of listing. As discussed above (see *Criteria Used to Identify Critical Habitat*), this unit provides an opportunity for expansion of the species' documented current range into an area that was previously occupied; this potential expansion will help to increase the redundancy and resiliency of the species and is therefore essential for the conservation of the species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

On February 11, 2016, the Service and National Marine Fisheries Service published a final rule in the **Federal Register** (81 FR 7214) revising the definition of "destruction or adverse modification" in the implementing regulations at 50 CFR 402.02. Destruction or adverse modification is defined as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species" that "may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features."

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

1. A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
2. A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

1. Can be implemented in a manner consistent with the intended purpose of the action,
2. Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
3. Are economically and technologically feasible, and
4. Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the elfin-woods warbler. Such alterations may include, but are not limited to, those that alter the PBFs essential to the conservation of these species or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support PBFs essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the elfin-woods warbler. These activities include, but are not limited to:

1. Actions that would significantly alter the structure and function of active shade-grown coffee plantations, abandoned coffee plantations, and/or agricultural lands with native forest cover and a closed canopy. These actions or activities may include, but are not limited to, deforestation, conversion of shade-grown coffee to sun-grown coffee plantations, and unsustainable agricultural practices (*i.e.*, agricultural and silvicultural practices other than sun- to shade-grown coffee conversion, and herbicide and pesticide use outside coffee plantations). These actions could degrade the habitat used by the elfin-woods warbler for feeding, reproducing, and sheltering.

2. Actions that would significantly alter the vegetation structure in and around the *Podocarpus*, dwarf, or Palo Colorado forests. These actions or activities may include, but are not limited to, habitat modification (*e.g.*, deforestation, fragmentation, loss, introduction of nonnative species, expansion or construction of communication facilities, expansion of recreational facilities, pipeline construction, bridge construction, road rehabilitation and maintenance, habitat management), Federal and State trust species reintroductions, trail maintenance, camping area maintenance, research, repair and restoration of landslides, and any other activities that are not conducted in accordance with the consultation and planning requirements for listed species under section 7 of the Act. These activities could alter the habitat structure essential to the elfin-woods warbler and may create suitable conditions for other species that compete with or prey upon the elfin-woods warbler or displace the species from its habitat.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act provides that: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the elfin-woods warbler, the benefits of critical habitat include public awareness of the presence of the elfin-woods warbler and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the elfin-woods warbler due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We are not proposing to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**, above).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this proposed designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat (USFWS 2015). The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the elfin-woods warbler (Abt Associates, Inc. 2016). The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units that are unoccupied by the species may require additional management or conservation efforts as a result of the critical habitat designation for the species, which may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM, constitute our draft economic analysis (DEA) of the proposed critical habitat designation for the elfin-woods warbler and is summarized in the narrative below.

Executive Orders (E.O.) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess to the extent practicable the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely to be affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the elfin-woods warbler, first we identified, in the IEM dated December 7, 2015, probable incremental economic impacts associated with the following categories of activities: forest management, silviculture/timber management, implementation of conservation/restoration practices, human-induced fire management, development or improvement of existing infrastructure (*e.g.,* roads, water intakes, water pipelines, electric transmission lines), recreation facilities, agriculture, and single house development funded by the U.S. Department of Housing and Urban Development (HUD). We considered each industry or category individually.

Additionally, we considered whether these activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; it only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the elfin-woods warbler is present, Federal agencies will already be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into that consultation process. Additionally, the Service extends this finding to unoccupied habitat, noting that "any project modifications or conservation measures recommended to prevent adverse modification of the EWW CH will not differ from project modifications and conservation measures recommended to prevent the jeopardy of other federally listed co-occurring species in the area (*e.g.* Puerto Rican sharp-shinned hawk) (ABT Associate, Incorporated 2016, p. 11)." These co-occurring species occupy areas that have been proposed as critical habitat for the EWW but are unoccupied by the species. Therefore, disproportionate impacts to any geographic area or sector are not likely as a result of this critical habitat designation.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the elfin-woods warbler's critical habitat. Because the designation of critical habitat for the elfin-woods warbler was proposed within several months of the proposed listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential PBFs identified for critical habitat are the same features essential for the life history requirements of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the elfin-woods warbler would also likely adversely affect the essential PBFs of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the elfin-woods warbler is approximately 10,977 ha (27,125 ac) within three units. Two of the units are occupied (89 percent of the total ha/ac) at the time of listing while one is not occupied (11 percent of the total ha/ac) at the time of listing (see Table 1, above). The proposed critical habitat designation consists of the following: Commonwealth lands (43 percent), Federal lands (42 percent), and private lands (15 percent).

Because the majority of the proposed critical habitat units are already managed for natural resource conservation, all proposed units have co-occurring federally listed species, and two of the three proposed units are occupied by the elfin-woods warbler, it is unlikely that costs will result from section 7 consultations considering critical habitat alone, consultations resulting in adverse modifications alone, or project modifications attributable to critical habitat alone. The only incremental costs predicted are the administrative costs due to additional consideration of adverse modification of critical habitat during section 7 consultations. Based on estimates from existing section 7 consultations on a surrogate listed species, the Puerto Rican sharp-shinned hawk, the DEA predicts that 5.4 technical assistance, 2.4 informal consultations, and 0.6 formal consultations per year will consider critical habitat for the elfin-woods warbler.

As a result of the critical habitat designation for the elfin-woods warbler, the PRDNER will incorporate the critical habitat under Commonwealth law through Appendix 2b under regulation 6766. This regulation introduces stricter requirements for critical, including a requirement to mitigate affected lands by a ratio of three to one. However, the DEA is unable to determine what, if any, incremental costs will result from this regulation because the Commonwealth regulation only applies to private agricultural lands where the Service already works to curb forest clearing. In addition, because there are other federally listed species in all units of the proposed critical habitat, the Service finds that the designation of critical habitat for the elfin-woods warbler is unlikely to lead to changes in permitting processes by Commonwealth or local agencies or other land managers.

Stigma effects (the perceived effects of designating critical habitat) are likely to be minimal because in all proposed critical habitat units land managers already take measures to protect the elfin-woods warbler. Namely, in Federal and Commonwealth land (85 percent of proposed critical habitat), an existing Candidate Conservation Agreement and a designation as a "critical element" under the National Heritage Program formalize conservation measures for the elfin-woods warbler. In private lands (15 percent of proposed critical habitat), stigma effects are likely to be very little because much of the land is agricultural with little possibility of future development. In addition, the Service has a history of working with these farmers in conservation programs that consider the elfin-woods warbler.

Based on the finding that the critical habitat designation will have minimal impact on land use or other activities (*i.e.*, there is little difference in the world due to the designation), the DEA concludes that benefits will also be minimal. Possible benefits, aside from the conservation of elfin-woods warbler, could include cultural heritage benefits and other non-use benefits. Due to limited data availability, however, the DEA does not monetize these benefits.

We do not have sufficient data to indicate that any concentration of impacts to any geographic area or sector is likely at this time. While Unit 1 has slightly more projected annual section 7 consultations than any other unit, the incremental costs of these section 7 consultations are likely to be very little. Other incremental costs, such as those that could occur due to stigma effects, could concentrate impacts in private critical habitat units compared to Federal and Commonwealth lands.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule. We may revise the proposed rule or DEA to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Exclusions

Exclusions Based on Economic Impacts

The DEA did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exercising her discretion to exclude any areas from this proposed designation of critical habitat for the elfin-woods warbler based on economic impacts.

During the development of a final designation, we will consider any additional economic impact information received through the public comment period. Accordingly, areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the elfin-woods warbler are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not intending to exercise her discretion to exclude any areas from the proposed designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

We are not considering any exclusions at this time from the proposed designation under section 4(b)(2) of the Act based on partnerships management, or protection afforded by cooperative management efforts. Some areas within the proposed designation are included in management plans or other conservation agreements such as Service's Wildlife Conservation Extension Agreements with private landowners, Natural Resources Conservation Service's conservation contracts with private landowners, cooperative agreements with nongovernmental organizations (NGOs), and the CCA signed at the end of 2014 among the Service, U.S. Forest Service, and PRDNER to implement conservation practices for the recovery of the elfin-woods warbler within EYNF and MCF.

Although the initiatives with private landowners and NGOs promote the restoration and enhancement of elfin-woods warbler habitat adjacent to the EYNF and MCF, potential challenges such as limited resources and uncertainty about landowners' participation may affect the implementation of conservation practices that mitigate impacts of agricultural practices and ensure the conservation of the species' essential habitat. We do not anticipate any negative effects of designating critical habitat in areas where existing partnerships occur. Further, there are no tribal lands in Puerto Rico. Therefore, we are not considering any exclusions at this time.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data and analyses. We will invite these peer reviewers to comment during this public comment period.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register** (see **DATES**, above). Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our DEA, we found that the designation of this proposed critical habitat would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue through the public review and comment period, and we will review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

1. This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5) through (7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

2. We do not believe that this rule would significantly or uniquely affect small governments because the majority of the proposed critical habitat units are already managed for natural resource conservation by the Federal government or the Commonwealth of Puerto Rico, and all proposed units have co-occurring federally listed species that are already being considered by the Commonwealth and municipalities for any actions proposed in the area. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the elfin-woods warbler in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for elfin-woods warbler would not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Puerto Rico. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the PBFs of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the proposed rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of PBFs essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. As discussed above, there are no tribal lands in Puerto Rico.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

1. Be logically organized;
2. Use the active voice to address readers directly;
3. Use clear language rather than jargon;
4. Be divided into short sections and sentences; and
5. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rulemaking are the staff members of the Caribbean Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.95, amend paragraph (b) by adding an entry for "Elfin-woods Warbler (*Setophaga angelae*)" in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Elfin-Woods Warbler (*Setophaga Angelae*)

(1) Critical habitat units for the elfin-woods warbler are in Puerto Rico. Critical habitat units are depicted on the maps in this entry.

(2) Within the critical habitat units, the physical or biological features essential to the conservation of the elfin-woods warbler consist of three components:

(i) Wet and rain montane forest types:

(A) *Podocarpus* forest at elevations between 600 and 900 meters (m) (1,968 and 2,952 feet (ft)) with continuous closed canopy of 20 m (66 ft) in height, dominated by *Podocarpus coriaceus* trees with well-developed understory.

(B) Dwarf forest at elevations above 900 m (2,952 ft) with a single story of trees between 1 and 6 m (3 and 19 ft) in height, with an understory of mosses, epiphytes, and liverworts.

(C) Palo Colorado forest at elevations between 600 and 900 m (1,968 and 2,952 ft) with a closed canopy of approximately 20 m (66 ft) and an understory dominated by grasses, ferns, bromeliads, and sedges.

(ii) Forested habitat areas that contain:

(A) Active shade-grown coffee plantations or forested agricultural lands dominated primarily by native vegetation; or

(B) Abandoned coffee plantations or agricultural lands with native forest cover and a closed canopy.

(iii) Forested habitat (at elevations between 300 and 850 m (984 and 2,788 ft)) not contained within the habitats described in paragraphs (2)(i) and (2)(ii) of this entry:

(A) Exposed ridge woodland forest found in valleys, slopes, and shallow soils with a more or less continuous canopy at elevations ranging from 550 to 750 m (1,804 to 2,460 ft);

(B) Timber plantation forest at elevations ranging from 630 to 850 m (2,066 to 2,788 ft); or

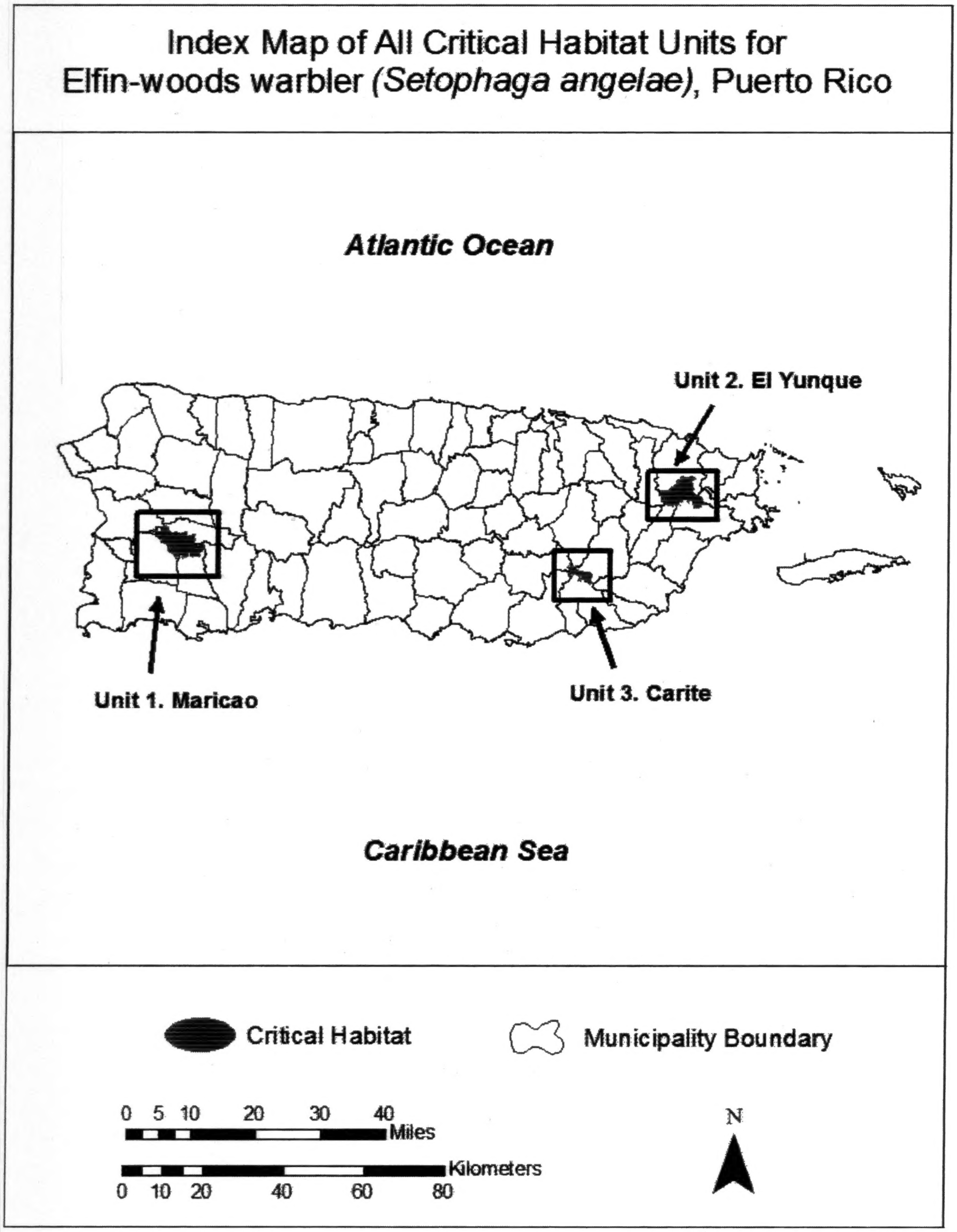
(C) Secondary forests dominated by native tree species with a closed canopy of approximately 20–30 m (66–100 ft) in height at elevations ranging from 300 to 750 m (984 to 2,460 ft).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [*EFFECTIVE DATE OF FINAL RULE*].

(4) *Critical habitat map units.* Data layers defining map units were created by delineating habitats that contain at least one or more of the physical or biological features defined in paragraph (2) of this entry, over a U.S. Department

of Agriculture (USDA) 2007 digital ortho photo mosaic, over a base of U.S. Geological Survey (USGS) digital topographic map quadrangle, and with the use of a digital landcover layer. The resulting critical habitat unit was then mapped using State Plane North American Datum (NAD) 83 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates, plot points, or both on which each map is based are available to the public at the Service's Internet site (*http://www.fws.gov/caribbean*), at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2016–0002, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

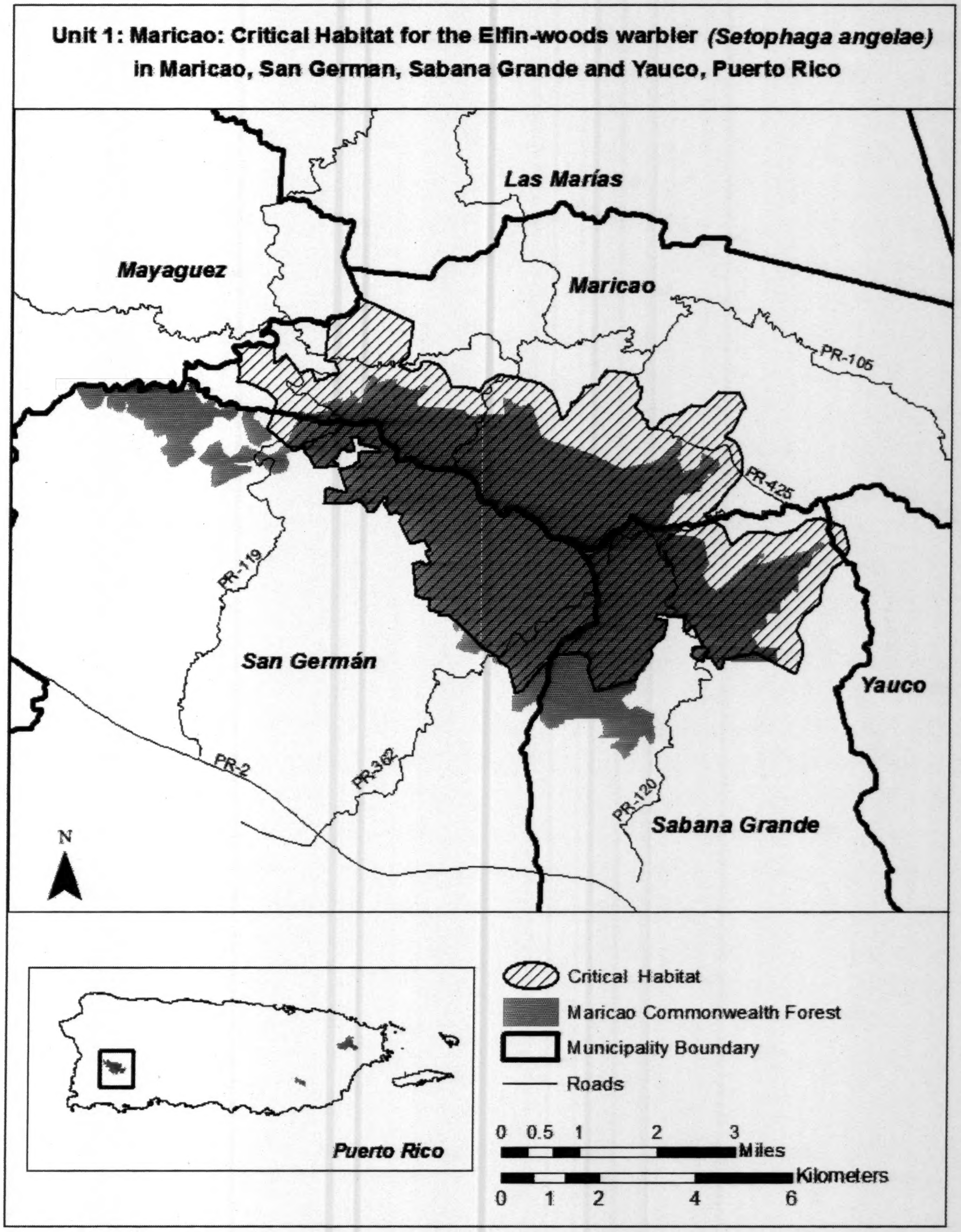
(5) *Note:* Index map follows:


Index Map of All Critical Habitat Units for
Elfin-woods warbler (Setophaga angelae), Puerto Rico
Atlantic Ocean
Unit 2. El Yunque
Unit 1. Maricao
Unit 3. Carite
Caribbean Sea
Critical Habitat
Municipality Boundary
0 5 10 20 30 40 Miles
Kilometers 0 10 20 40 60 80
N

(6) Unit 1: Maricao; Maricao, San Germán, Sabana Grande, and Yauco Municipalities, Puerto Rico.

(i) *General description:* Unit 1 consists of a total of 5,105 hectares (ha) (12,615 acres (ac)). Approximately 3,442 ha (8,506 ac) are owned by the Commonwealth and managed by the Puerto Rico Department of Natural and Environmental Resources, and 1,663 ha (4,109 ac) are in private ownership. The unit is located north of State Road PR–2, south of State Road PR–105, and approximately 105 kilometers (km) (65 miles (mi)) west of the International Airport Luis Muñoz Marin.

(ii) Map of Unit 1 follows:



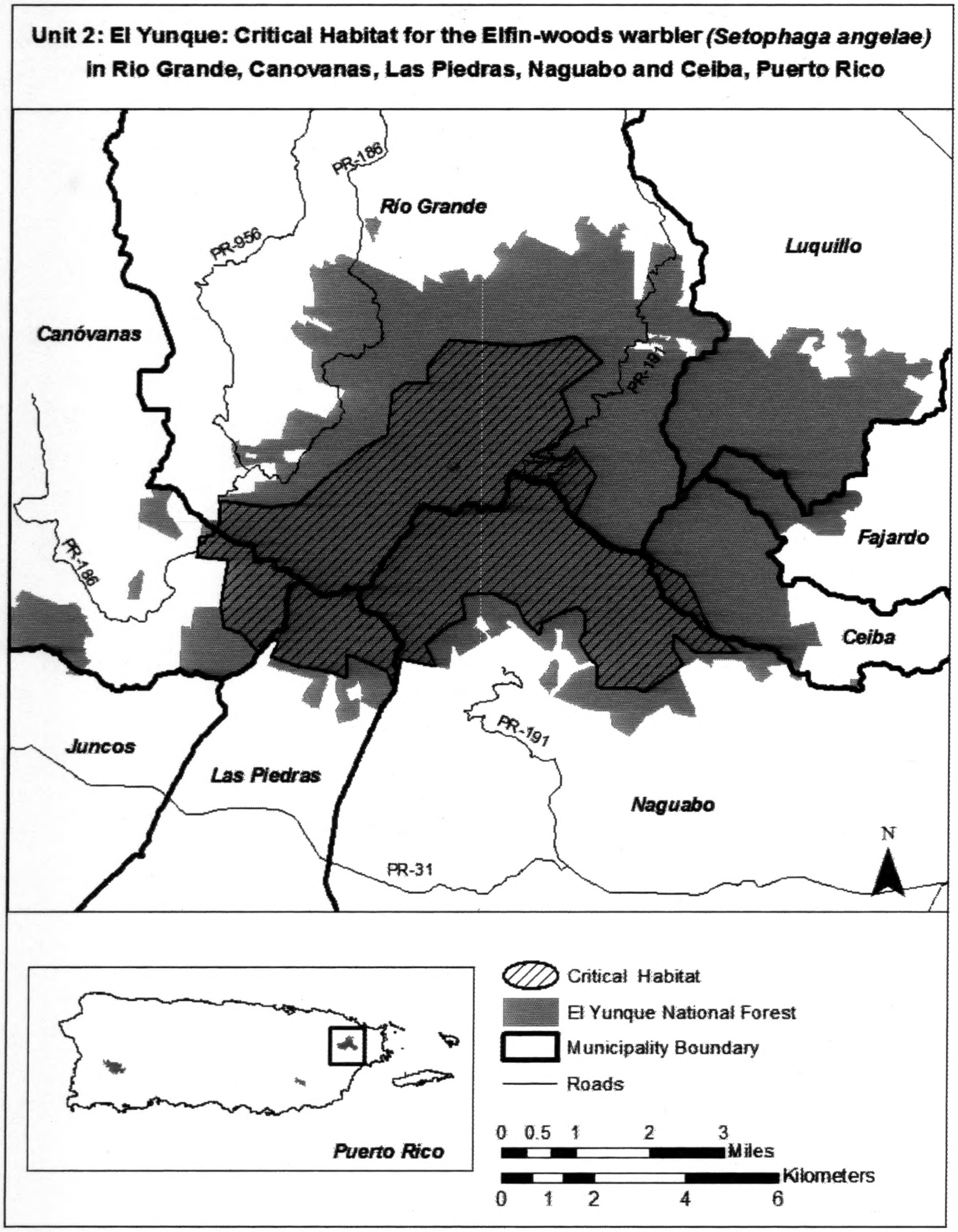
Unit 1: Maricao: Critical Habitat for the Elfin-woods warbler *(Setophaga angelae)* in Maricao, San German, Sabana Grande and Yauco, Puerto Rico

Las Marías
Mayaguez
Maricao
PR-105
PR-425
PR-119
San Germán
Yauco
PR-2
PR-362
PR-120
Sabana Grande
N
Puerto Rico
Critical Habitat
Maricao Commonwealth Forest
Municipality Boundary
Roads
0 0.5 1 2 3 Miles
0 1 2 4 6 Kilometers

(7) Unit 2: El Yunque; Río Grande, Canovanas, Las Piedras, Naguabo, and Ceiba Municipalities, Puerto Rico.

(i) *General description:* Unit 2 consists of 4,626 ha (11,430 ac) of federally owned land managed by the U.S. Forest Service (El Yunque National Forest). The unit is located within El Yunque National Forest, east of State Road PR–186, north of State Road PR–31, and approximately 24 km (15 mi) east of the International Airport Luis Muñoz Marin.

(ii) Map of Unit 2 follows:



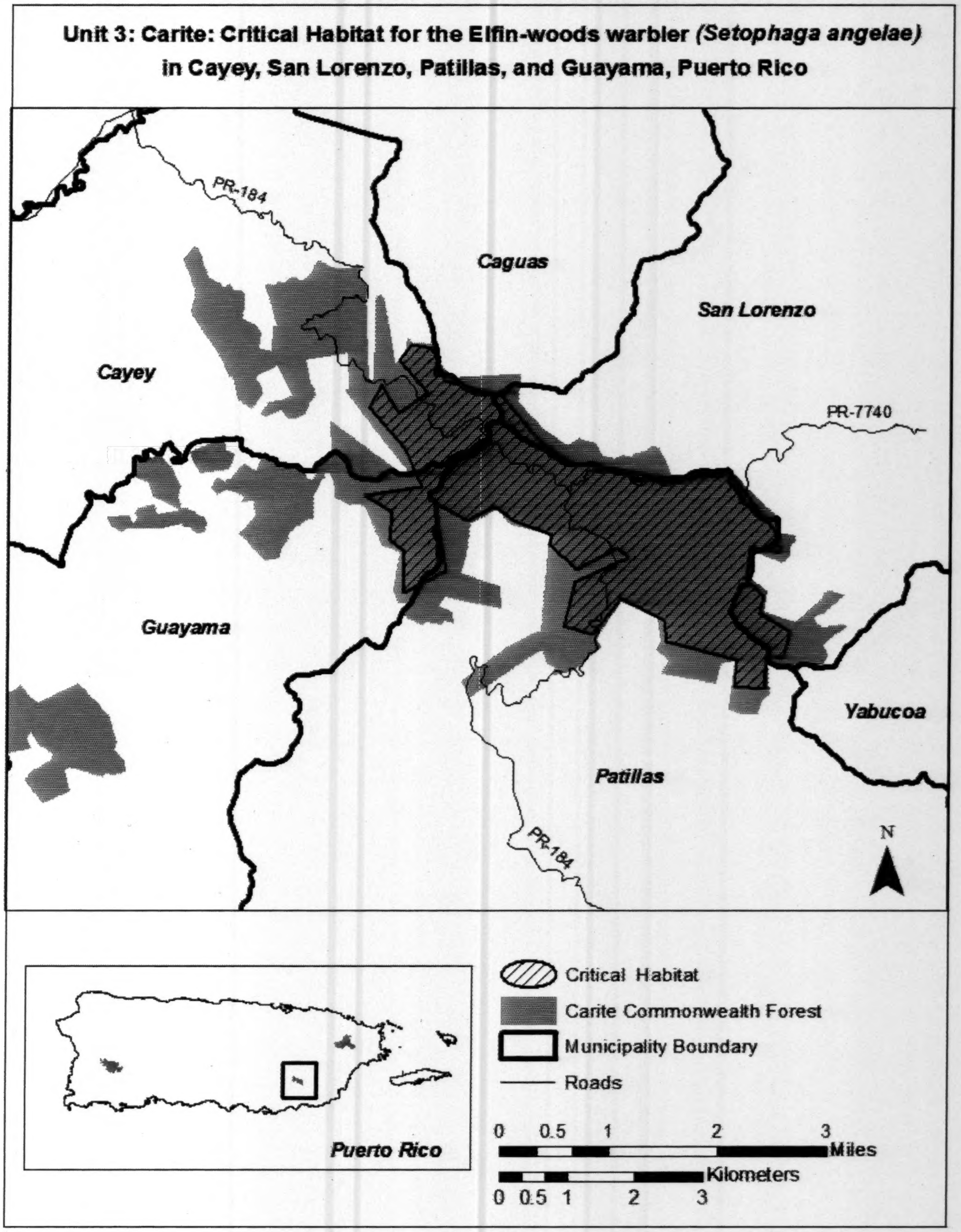
Unit 2: El Yunque: Critical Habitat for the Elfin-woods warbler *(Setophaga angelae)* in Rio Grande, Canovanas, Las Piedras, Naguabo and Ceiba, Puerto Rico

PR-186
Río Grande
PR-956
Luquillo
Canóvanas
PR-191
Fajardo
PR-186
Ceiba
Juncos
Las Piedras
PR-191
Naguabo
N
PR-31
Puerto Rico
Critical Habitat
El Yunque National Forest
Municipality Boundary
Roads
0 0.5 1 2 3
Miles
Kilometers
0 1 2 4 6

(8) Unit 3: Carite; Cayey, San Lorenzo, Guayama, and Patillas Municipalities, Puerto Rico.

(i) *General description:* Unit 3 consists of 1,246 ha (3,080 ac) of lands owned by the Commonwealth and managed by the Puerto Rico Department of Natural and Environmental Resources. The unit is located within the Carite Commonwealth Forest west of State Road PR–7740 and State Road PR–184 that run within the Carite Commonwealth Forest, and approximately 37 km (23 mi) south of the International Airport Luis Muñoz Marin.

(ii) Map of Unit 3 follows:



Unit 3: Carite: Critical Habitat for the Elfin-woods warbler *(Setophaga angelae)* in Cayey, San Lorenzo, Patillas, and Guayama, Puerto Rico

PR-184
Caguas
San Lorenzo
Cayey
PR-7740
Guayama
Yabucoa
Patillas
PR-184
N
Critical Habitat
Carite Commonwealth Forest
Municipality Boundary
Roads
Puerto Rico
0 0.5 1 2 3 Miles
Kilometers 0 0.5 1 2 3

* * * * *

Dated: June 7, 2016.

Karen Hyun,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–14539 Filed 6–21–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160301165–6165–01]

RIN 0648–BF88

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Proposed 2016–2018 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: This rulemaking proposes catch limits, commercial quotas, and possession limits for the spiny dogfish fishery for the 2016–2018 fishing years. The proposed action was developed by the Mid-Atlantic and New England Fishery Management Councils pursuant to the fishery specification requirements of the Spiny Dogfish Fishery Management Plan. These management measures are supported by the best available scientific information and reflect recent declines in spiny dogfish biomass, and are expected to result in minor positive economic impacts for the spiny dogfish fishery while maintaining the conservation objectives of the Spiny Dogfish Fishery Management Plan.

DATES: Comments must be received on or before July 7, 2016.

ADDRESSES: Copies of the specifications, including the Environmental Assessment and Regulatory Impact Review (EA/RIR), and other supporting documents for the action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The framework is also accessible via the Internet at: *http://www.greateratlantic.fisheries.noaa.gov.*

You may submit comments, identified by NOAA–NMFS–2016–0061, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0061,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Spiny Dogfish Specifications."

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, (978) 281–9182.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic spiny dogfish (*Squalus acanthias*) fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils. The Atlantic States Marine Fisheries Commission also manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan. The Federal Spiny Dogfish Fishery Management Plan (FMP) was implemented in 2000, when spiny dogfish were determined to be overfished. The spiny dogfish stock was declared to be successfully rebuilt in 2010, and it continues to be above its target biomass.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying an annual catch limit (ACL), commercial quota, possession limit, and other management measures for a period of 1–5 years. The Mid-Atlantic Council's Scientific and Statistical Committee (SSC) reviews the best available information on the status of the spiny dogfish population and recommends acceptable biological catch (ABC) levels. This recommendation is then used as the basis for catch limits and other management measures developed by the Council's Spiny Dogfish Monitoring Committee and Joint Spiny Dogfish Committee (which includes members of both Councils). The Councils then review the recommendations of the committees and make their specification recommendations to NMFS. NMFS reviews those recommendations, and may modify them if necessary to ensure that they are consistent with the FMP and other applicable law. NMFS then publishes proposed measures for public comment.

Spiny Dogfish Stock Status Update

In November 2015, the Northeast Fisheries Science Center updated spiny dogfish stock status, using the most recent catch and biomass estimates from the spring trawl surveys, and a new model to help account for the missing spring 2014 trawl survey value. Updated estimates indicate that the female spawning stock biomass (SSB) for 2015 was 371 million lb (168,207 mt), about 6 percent above the target maximum sustainable yield biomass proxy (SSBmax) of 351 million lb (159,288 mt). The 2015 fishing mortality (F) estimate for the stock was 0.21, below the overfishing threshold (FMSY) of 0.2439. Therefore, the spiny dogfish stock is not currently overfished or experiencing overfishing.

However, the 3-year average survey index of female SSB dropped substantially in 2015. This decline was not unexpected and is primarily due to (1) high variance in the survey, and (2) poor spiny dogfish pup production (*i.e.,* recruitment to the dogfish stock). The 2012 survey index value (a point estimate) was very high. Because of this, it was expected that the 3-year average survey index would decline as that high value worked out of 3-year average calculation. Further, the 2015 survey index value was the lowest value in 15 years. As a result, the 3-year average survey index has declined. Similar to the expected reduction in the 3-year average survey index, the effect of poor pup production has been anticipated for some time. Poor pup production from approximately 1997–2003 has reduced SSB. Because of the formulaic method used to drive the ABC, consistent with the Council's risk policy, a reduction in the SSB calculated from the 3-year average survey index leads directly to a reduction in the ABC value.

The Mid-Atlantic Council's Scientific and Statistical Committee reviewed this information and recommended reducing the ABC levels for spiny dogfish for the 2016–2018 fishing years. The ABC recommendations were based on an overfishing level (OFL) of median catch at the FMSY proxy and the Council's risk policy. The resulting new spiny dogfish ABCs are 52.1 million lb (23,617 mt) for 2016, 50.8 million lb (23,045 mt) for 2017, and 49.9 million lb (22,635 mt) for 2018 (decreases from 62.4 million lb (28,310 mt) in 2015).

Proposed Specifications

The Councils' Spiny Dogfish Monitoring Committee and the Commission's Spiny Dogfish Technical Committee met in Fall 2015 to determine the resulting ACLs and quotas following the FMP's process. To calculate the commercial quota for each year, deductions were made from the ABC to account for Canadian landings (143,300 lb (65 mt)), U.S. discards (11.494 million lb (5,214 mt)), and U.S. recreational harvest (68,343 lb (31 mt)). The resulting ACLs and commercial quotas are summarized in Table 1.

TABLE 1—PROPOSED 2016–2018 ACL AND COMMERCIAL QUOTA SPECIFICATIONS FOR THE SPINY DOGFISH FISHERY

Fishing year	ACL (lb)	ACL (mt)	Commercial quota (lb)	Commercial quota (mt)	Change from 2015 (percent)
2016	51,923,272	23,552	40,360,761	18,307	−20
2017	50,662,228	22,980	39,099,717	17,735	−23
2018	49,758,333	22,570	38,195,822	17,325	−25

Because of the proposed harvest reductions, the Councils initially recommended the status quo spiny dogfish trip limit of 5,000 lb (2,268 kg) in their October and December 2015 meetings. This recommendation was submitted to NMFS when the Councils took final action. However, these reduced quotas are still significantly higher than actual landings in recent years due to limited demand. At their April 2016 meetings both Councils voted to request an increase in the trip limit to 6,000 lb (2,722 kg), based upon input from the Commission and a number of fishing industry representatives.

In this rule, NMFS is proposing the status quo (5,000 lb (2,268 kg)) trip limit because this was the recommendation originally submitted to us by the Councils. However, we will review the Commission's and Councils' more recent requests along with other public comments, and consider increasing the trip limit to 6,000 lb (2,722 kg), as recommended by the Councils and Commission, in the final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purpose of E.O. 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of the specifications document, the EA for the specifications, and this preamble to the proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from the Councils (see **ADDRESSES**).

Description of the Reasons Why Action by the Agency Is Being Considered and Statement of Objectives of, and Legal Basis for, This Proposed Rule

A description of the action, why it is being considered, and the legal basis for this action are contained in the Background section of the preamble and in the SUMMARY of this proposed rule and are not repeated here.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Proposed Rule

This action does not introduce any new reporting, recordkeeping, or other compliance requirements.

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This proposed rule would impact fishing vessels, including commercial fishing entities. In 2014, there were 2,473 vessels that held an open access spiny dogfish permit. Cross-referencing those permits with vessel ownership data revealed that 1,830 entities owned those vessels. According to the Small Business Administration (SBA), firms are classified as finfish or shellfish firms based on the activity from which they derive the most revenue. Using the $5.5 million cutoff for shellfish firms (NAICS 114112) and the $20.5 million cutoff for finfish firms (NAICS 114111), 18 entities (1.0 percent) qualified as large businesses in 2014. Of the 1,812 small entities, 570 were finfish small entities, 580 were shellfish small entities, and 244 were for-hire small entities. Additionally, 418 small entities had no revenue in 2014. On average, for small entities, spiny dogfish is responsible for a small fraction of total landings, and active participants derive a small share of gross receipts from the spiny dogfish fishery.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

These proposed specifications include management measure alternatives for (1) the spiny dogfish ACLs and associated commercial quotas, and (2) spiny dogfish trip limits, which are fully described in the EA supporting this action (see **ADDRESSES**). The preferred ACL/quota alternative described in the preamble of this proposed rule (Alternative 2), as well as Alternative 3, represent reductions (20–25 percent for Alternative 2; 50–51 percent for Alternative (3) in the allowable landings as compared to the no action alternative. Therefore, as compared to the other alternatives, the no action alternative would have a higher potential of minimizing short-term economic impacts on small entities. However, the potential negative economic impacts of Alternatives 2 and 3 are unlikely to be realized because they would not constrain landings in the fishery, and not result in revenue losses commensurate with the quota reductions. Average spiny dogfish landings for 2012–2014 was approximately 22 million lb (9,979 mt), which is lower than any of the analyzed quota alternatives. Therefore, the proposed action is expected to have neutral economic impacts compared to no action in the short-term, but have potentially low positive impacts in the long-term due to maintaining sustainability of the spiny dogfish resource.

Regarding spiny dogfish trip limits, the proposed action is to maintain the status quo (5,000 lb (2,268 kg)). Higher trip limits were considered in Alternative 4 (6,000 lb (2,722 kg)) and Alternative 5 (7,000 lb (3,175 kg)). In general, higher trip limits could result in greater immediate revenue per trip, but would increase the potential for an abbreviated season if the quota or processing capacity is reached. Large increases in trip limits may also contribute to lower and more unstable prices. Given the currently limiting overall demand for spiny dogfish, trip limits may not have a large effect on overall revenue across the fishery, only the rate of landings. Therefore, the alternatives with higher trip limits may help minimize economic impacts, but only if prices remain relatively stable and demand increases.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 15, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–14815 Filed 6–21–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 120
Wednesday, June 22, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

[Docket No.: 160518437–6437–01]

Office of Administration; Commerce Alternative Personnel System

AGENCY: Office of Administration, Office of Human Resources Management, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice announces modifications to the provisions of the Commerce Alternative Personnel System, formerly the Department of Commerce Personnel Management Demonstration Project, published in the **Federal Register** on December 24, 1997.

As published on January 2, 2015 (80 FR 25), coverage under the Commerce Alternative Personnel System was expanded to include employees located in the National Telecommunications and Information Administration (NTIA), employed under the First Responder Network Authority (FirstNet), and direct-hire authority was implemented for certain FirstNet scientific and engineering positions in the ZP career path at the Pay Band IV and above, under section 3304(a)(3) of Title 5 of the United States Code.

This notice serves to amend the System to increase the number of ZP positions FirstNet is authorized to fill under direct-hire authority and to include ZP positions at Pay Band level III and above.

DATES: The amended Commerce Alternative Personnel System is effective June 22, 2016.

FOR FURTHER INFORMATION CONTACT: Department of Commerce—Sandra Thompson, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 51020, Washington, DC 20230, (202) 482–0056 or Valerie Smith at (202) 482–0272.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Personnel Management (OPM) approved the Department of Commerce (DoC) demonstration project for an alternative personnel management system and published the approval of the final plan in the **Federal Register** on Wednesday, December 24, 1997 (62 FR 67434). The demonstration project was designed to simplify current classification systems allowing greater flexibility in classifying work and paying employees; establish a performance management and rewards system for improving individual and organizational performance; and improve recruiting and examining to attract highly-qualified candidates. The purpose of the project was to strengthen the contribution of human resources management and test whether the same innovations conducted under the National Institute of Standards and Technology alternative personnel management system would produce similarly successful results in other DoC environments. The project was implemented on March 29, 1998. The project plan has been modified nine times to clarify certain DoC Demonstration Project authorities, and to extend and expand the project: 64 FR 52810 (September 30, 1999); 68 FR 47948 (August 12, 2003); 68 FR 54505 (September 17, 2003); 70 FR 38732 (July 5, 2005); 71 FR 25615 (May 1, 2006); 71 FR 50950 (August 28, 2006); 74 FR 22728 (May 14, 2009); 80 FR 25 (January 2, 2015); 81 FR 20322 (April 7, 2016). With the passage of the Consolidated Appropriations Act, 2008, Public Law 110–161, on December 26, 2007, the project was made permanent (extended indefinitely) and renamed the Commerce Alternative Personnel System (CAPS).

CAPS provides for modifications to be made as experience is gained, results are analyzed, and conclusions are reached on how the system is working. This notice announces that the DoC modifies the plan to increase the number of FirstNet positions authorized to be filled under direct-hire authority in the approved ZP career paths and to include occupational series at Pay Band level III and above. The DoC will follow the CAPS plan, as published in the **Federal Register** on December 24, 1997, and subsequent modifications as listed in the Background Section of this notice.

Kevin E. Mahoney,

Director for Human Resources Management and Chief Human Capital Officer.

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I. Executive Summary

CAPS is designed to (1) improve hiring and allow DoC to compete more effectively for high-quality candidates through direct hiring, selective use of higher entry salaries, and selective use of recruitment incentives; (2) motivate and retain staff through higher pay potential, pay-for-performance, more responsive personnel systems, and selective use of retention incentives; (3) strengthen the manager's role in personnel management through delegation of personnel authorities; and (4) increase the efficiency of personnel systems through the installation of a simpler and more flexible classification system based on pay banding through reduction of guidelines, steps, and paperwork in classification, hiring, and other personnel systems, and through automation.

The current participating organizations include 7 offices of the Chief Financial Officer/Assistant Secretary for Administration in the Office of the Secretary; the Bureau of Economic Analysis; the Institute for Telecommunication Sciences—National Telecommunications and Information Administration; the First Responder Network Authority—National Telecommunications and Information Administration; and 12 units of the National Oceanic and Atmospheric Administration: Office of Oceanic and Atmospheric Research, National Marine Fisheries Service, the National Environmental Satellite, Data, and Information Service, National Weather Service—Space Environment Center, National Ocean Service, Program Planning and Integration Office, Office of the Under Secretary, Marine and Aviation Operations, Office of the Chief Administrative Officer, Office of the Chief Financial Officer, the Workforce Management Office, and the Office of the Chief Information Officer.

This amendment modifies the January 2, 2015 **Federal Register** notice (80 FR

25). Specifically, it increases the number of positions authorized to be filled under direct-hire authority, now including Pay Band III and above, and enables FirstNet to hire, after public notice is given, any qualified applicants in the ZP career path series as defined in the Basis for CAPS Expansion section without regard to 5 U.S.C. 3309–3318, 5 CFR part 211, or 5 CFR part 337, subpart A on a limited basis.

II. Basis for CAPS Expansion

A. Purpose

CAPS is designed to provide managers at the lowest organizational level the authority, control, and flexibility to recruit, retain, develop, recognize, and motivate its workforce, while ensuring adequate accountability and oversight.

FirstNet is required to manage the deployment and maintenance of the National Public Safety Broadband Network (NPSBN) for public safety responders within statutory requirements established in the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96). Every phase of the program requires FirstNet to quickly hire qualified individuals, for specialized roles, to meet the requirements imposed by the Act. FirstNet recruitment efforts, utilizing direct-hire authority, have proven successful for ZP positions in the following occupational series: 0089—Emergency Management; 0854—Computer Engineering; and 0855—Electronics Engineering. FirstNet was previously authorized to utilize direct-hire authority to fill up to 56 positions in the 0089 series and up to 21 positions in the 0850; 0854; 0855 and the 1550 series, with the total number of positions allowed to be filled under direct-hire authority to not exceed 77 positions in the ZP career path at any one time. By increasing the number of authorized ZP positions to be filled under direct-hire authority and expanding the Pay Band to include positions at the Pay Band III level and above, FirstNet will continue to recruit and compete more effectively for qualified personnel possessing technical expertise in 4G LTE wireless network and other emerging wireless network technologies and/or the development of mobile software and network architecture as well as individuals possessing technical expertise in the formulation, development, and engagement of public safety officials in planning and implementing the nation-wide public safety broadband network and the programmatic requirements of the network acquisition through their public safety experience in preventing, protecting, responding, coordinating and/or mitigating emergency events. These areas of expertise are critical in order to test, evaluate, deploy, and operate a nation-wide public safety broadband network. The number of positions in the 0089, Emergency Management series, authorized to be filled under direct-hire authority will increase from 56 positions to 89 at Pay Bands III and above. The number of positions in the following series will increase from 21 positions to 39 at Pay Bands III and above: 0850, Electrical Engineering; 0854, Computer Engineering; 0855, Electronics Engineering; and 1550, Computer Science. The use of direct-hire authority to fill these positions will not exceed 128 positions in the specified ZP career paths at any one time. FirstNet will track the number of hires made under direct-hire authority, ensuring numbers specified for the occupational series are not exceeded.

Section 3304(a)(3) of Title 5 of the United States Code, provides agencies with the authority to appoint candidates directly to jobs for which the Office of Personnel Management (OPM) determines that there is a severe shortage of candidates or a critical hiring need. In 1997, with the approval of the DoC's Demonstration Project (62 FR 67434, December 24, 1997), OPM concurred that some occupations in the ZP career path at the Pay Band III and above constitute a shortage category, and some occupations for which there is a special rate under the General Schedule pay system constitute a shortage category. Past recruitment efforts have demonstrated a critical shortage of candidates possessing specialized technical, programmatic and contract expertise in 4G Long Term Evaluation (LTE) technologies and mobile systems, as well as expertise in public safety organizational operations and infrastructure capabilities.

DoC's CAPS allows for modifications of procedures if no new waiver from law or regulation is added. Given that this expansion and modification is in accordance with existing law and regulation and CAPS is a permanent alternative personnel system, the DoC is authorized to make the changes described in this notice.

III. Changes to the Project Plan

The CAPS at DoC, originally published in the **Federal Register** on December 24, 1997 (62 FR 67434) and subsequently expanded as discussed above, Section III (80 FR 25, January 2, 2015), is modified as follows:

1. Section III Personnel System Changes, (B) Staffing: Replace the paragraph in subsection titled: "Direct-Hire Authority: Critical Shortage Occupations" to state:

> DoC FirstNet uses direct-hire procedures for categories of occupations that require skills that are in short supply. The following occupations constitute a shortage category at the Pay Band III and above, in the ZP Career Path: Electronics Engineers, Electrical Engineers, Computer Engineers, Computer Scientists, and Emergency Management Specialists (Public Safety). Any positions in these categories may be filled by FirstNet through direct-hire procedures in accordance with 5 U.S.C. 3304(a)(3). DoC FirstNet advertises the availability of job opportunities in direct-hire occupations by posting on the OPM USAJOBS Web site. DoC FirstNet will follow internal direct-hire procedures for accepting applications.

[FR Doc. 2016–14785 Filed 6–21–16; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Jose Orence Cocchiola, Register Number: 02247–104, McRae Correctional Institution, P.O. Drawer 55030, McRae Helena, GA 31055; Order Denying Export Privileges

On August 19, 2014, in the U.S. District Court for the Southern District of Florida, Jose Orence Cocchiola ("Cocchiola"), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) ("AECA"). Specifically, Cocchiola knowingly and willfully attempted to export defense articles, that is, 9mm pistols, from the United States to Venezuela, without having first obtained a license or written approval from the United States Department of State. Cocchiola was sentenced 36 months of imprisonment, one year of supervised release, and a $200 assessment.

Section 766.25 of the Export Administration Regulations ("EAR" or "Regulations")[1] provides, in pertinent part, that "[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act ("EAA"), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778)." 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security ("BIS") licenses previously issued in which the person had an interest in at the time of his conviction.

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2015). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*)). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2015 (80 FR 48,233 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

BIS has received notice of Cocchiola's conviction for violating the AECA, and has provided notice and an opportunity for Cocchiola to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Cocchiola.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Cocchiola's export privileges under the Regulations for a period of five (5) years from the date of Cocchiola's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Cocchiola had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until August 19, 2019, Jose Orence Cocchiola, with a last known address of Register Number: 02247–104, McRae Correctional Institution, P.O. Drawer 55030, McRae Helena, GA 31055, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Cocchiola by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Cocchiola may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Cocchiola. This Order shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until August 19, 2019.

Issued this 15 day of June 2016.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2016–14746 Filed 6–21–16; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Ribway Airlines Company Limited, 54 Kairaba Avenue, Kanifing Municipality, WCR, The Gambia; John Edward Meadows, 50 St. Leonards Road, Bexhill on Sea, East Sussex, TN40 1JB, United Kingdom, Jeffrey John James Ashfield, 50 St. Leonards Road, Bexhill on Sea, East Sussex, TN40 1JB, United Kingdom; AC AVIATIE UK Limited, f/k/a Bin Vali Aviation Limited, 50 St. Leonard's Road, Bexhill on Sea, East Sussex, TN40 1JB, United Kingdom, Respondents; Modification of March 1, 2016 Amended Temporary Denial Order

Pursuant to Section 766.24 of the Export Administration Regulations (the "Regulations" or "EAR"),[1] I hereby grant the request of the Office of Export Enforcement ("OEE") to modify the Temporary Denial Order issued on January 19, 2016, as amended on March 1, 2016. OEE has requested that the following parties be removed from the TDO:

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[1] The EAR are currently codified at 15 CFR parts 730–774 (2016). The EAR issued under the Export Administration Act of 1979, as amended 50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*) ("EAA" or the "Act"). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2015 (80 FR 48,223 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

moreJet Ltd., 60 Brackendale Road, Bournemouth, BH8 9HZ, United Kingdom;

Castle Malwood, Minstead, Lyndhurst, Hampshire, SO43 7PE, United Kingdom;

Stefan Piotr Kondak, a/k/a Stefan Peter Kondak, 150 Broadway, Bournemouth, Dorset, BH6 4EC, United Kingdom;

60 Brackendale Road, Bournemouth, BH8 9HZ, United Kingdom;

Castle Malwood, Minstead, Lyndhurst, Hampshire, SO43 7PE, United Kingdom.

On January 19, 2016, I signed the original TDO, denying for 180 days the export privileges of Ribway Airlines Company Limited ("Ribway Airlines"), John Edward Meadows, Jeffrey John James Ashfield, Af-Aviation Limited, and Andy Farmer (Af-Aviation's director). The TDO was issued *ex parte* pursuant to Section 766.24(a) and went into effect upon issuance on January 19, 2016.[2]

The TDO issued based upon evidence presented by OEE concerning an attempt to ferry or reexport two Boeing 737 aircraft, with manufacturer serial numbers 26444 and 26458, respectively, from Romania to Iran without the U.S. Government authorization required by Sections 742.8 and 746.7 of the EAR.[3] Subsequently, on March 1, 2016, I amended the TDO by adding AC AVIATIE UK Limited, formerly known as Bin Vali Aviation Limited, moreJet Ltd., and Stefan Piotr Kondak to the TDO as additional respondents based upon evidence obtained by OEE subsequent to original issuance of the TDO.[4] The original TDO issued on January 19, 2016, and the amended TDO issued on March 1, 2016, are incorporated herein by reference.

Having considered OEE's request, I find that moreJet Ltd. and Stefan Piotr Kondak should be removed from the TDO. The TDO shall remain in full force and effect as to Ribway Airlines Company Limited, John Edward Meadows, Jeffrey John James Ashfield, and AC AVIATIE UK Limited.

It is therefore ordered:

First, that Ribway Airlines Company Limited, 54 Kairaba Avenue, Kanifing Municipality, WCR, The Gambia; John Edward Meadows, 50 St. Leonards Road, Bexhill on Sea, East Sussex, TN40 1JB, United Kingdom; Jeffrey John James Ashfield, 50 St. Leonards Road, Bexhill on Sea, East Sussex, TN40 1JB, United Kingdom; and AC Aviatie UK Limited, F/K/A BIN Vali Aviation Limited, 50 St. Leonard's Road, Bexhill on Sea, East Sussex, TN40 1JB, United Kingdom, and when acting for or on their behalf, any successors or assigns, agents, or employees (each a "Denied Person" and collectively the "Denied Persons") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Export Administration Regulations ("EAR"), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on Ribway Airlines Company Limited, John Edward Meadows, Jeffrey John James Ashfield, AC Aviatie UK Limited, moreJet Ltd., and Stefan Piotr Kondak, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect until July 17, 2016, unless renewed in accordance with Section 766.24(d) of the Regulations.

Dated: June 15, 2016.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2016–14748 Filed 6–21–16; 8:45 am]

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[2] The January 19, 2016 TDO was published in the **Federal Register** on January 26, 2016. 81 FR 4250 (Jan. 26, 2016).

[3] Both Boeing 737s are subject to the EAR and are classified under Export Control Classification Number ("ECCN") 9A991.b and are controlled for anti-terrorism reasons.

[4] The March 1, 2016 amended TDO was published in the **Federal Register** on March 9, 2016. 81 FR 12459 (March 9, 2016). The March 1, 2016 amended TDO also removed Af-Aviation Limited and Andy Farmer as respondents.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Dennis Haag, 3940 County Line Road, Lenox, MI 48050; Order Denying Export Privileges

On September 24, 2014, in the U.S. District Court for the Eastern District of Michigan, Dennis Haag ("Haag"), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) ("AECA"). Specifically, Haag knowingly and willfully exported defense articles, that is rifle barrels and other parts, from the United States to South Africa, which rifle parts were designated as defense articles on the United States Munitions List, without having first obtained from the State Department a license as required by law. Haag was sentenced three years of probation, a $200 assessment and a criminal fine of $39,000.

Section 766.25 of the Export Administration Regulations ("EAR" or "Regulations")[1] provides, in pertinent part, that "[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act ("EAA"), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778)." 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security ("BIS") licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Haag's conviction for violating the AECA, and has provided notice and an opportunity for Haag to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has received a submission from Haag.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Haag's export privileges under the Regulations for a period of five (5) years from the date of Haag's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Haag had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until September 24, 2019, Dennis Haag, with a last known address of 3940 County Line Road, Lenox, MI 48050, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Haag by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Haag may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Haag. This Order shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until September 24, 2019.

Issued this 15 day of June 2016.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2016–14744 Filed 6–21–16; 8:45 am]

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2015). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*)). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2015 (80 FR 48,233 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Ismael Reta, Register Number: 78795–379, Federal Correctional Institution, P.O. Box 4200, Three Rivers, TX 78071; Order Denying Export Privileges

On June 15, 2015, in the U.S. District Court for the Southern District of Texas, Ismael Reta ("Reta"), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) ("AECA"). Specifically, Reta intentionally and knowingly conspired and agreed together with other person or persons known and unknown to the Grand Jurors, to knowingly and willfully export, attempt to export, and cause to be exported into Mexico from the United States defense article, that is, to-wit: a Colt, Model M4, 5.56mm rifle; a Romarm, Model WASR–10, 7.62x39mm rifle; a Berretta, Model 92FS, 9mm pistol, two hundred sixty-two (262) rounds of 5.56mm ammunition; and fifty (50) rounds of 7.62x39mm ammunition, which were designated as defense articles on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export. Reta was sentenced 37 months of imprisonment, three years of supervised release, and a $100 assessment.

Section 766.25 of the Export Administration Regulations ("EAR" or "Regulations")[1] provides, in pertinent part, that "[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act ("EAA"), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778)." 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. 4610(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. 4610(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security ("BIS") licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Reta's conviction for violating the AECA, and has provided notice and an opportunity for Reta to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Reta.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Reta's export privileges under the Regulations for a period of 10 years from the date of Reta's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Reta had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until June 15, 2025, Ismael Reta, with a last known address of Register Number: 78795–379, Federal Correctional Institution, P.O. Box 4200, Three Rivers, TX 78071, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Reta by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Reta may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Reta. This Order shall be published in the **Federal Register**.

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2015). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*)). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2015 (80 FR 48,233 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

Sixth, this Order is effective immediately and shall remain in effect until June 15, 2025.

Issued this 15 day of June 2016.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2016–14745 Filed 6–21–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818; C–475–819]

Certain Pasta From Italy: Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is self-initiating a changed circumstances review of the antidumping (AD) and countervailing (CVD) orders on certain pasta from Italy[1] (1) in furtherance of the purpose of the International Trade Data System (ITDS) initiative and U.S. Customs and Border Protection's (CBP) efforts to modernize the electronic submission of import documents using the Automated Commercial Environment (ACE), and (2) to align across the *AD/CVD Italy Pasta Orders* the scope language regarding certifications accompanying imports of organic pasta. Specifically, in conjunction with this initiation, the Department preliminarily determines to convert the certification submission requirement to a record-keeping requirement, to authorize electronic submission of the certification, to update the scope language relating to the organic pasta exclusion, and to align the certification language across the *AD/CVD Italy Pasta Orders.* Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* June 22, 2016.

FOR FURTHER INFORMATION CONTACT: Jennifer Meek, Office I for AD/CVD Operations, at (202) 482–2778; George McMahon, Office III for AD/CVD Operations, at (202) 482–1167; or Sam Zengotitabengoa, Customs Liaison Unit for AD/CVD Operations, at (202) 482–4195, AD/CVD Operations, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The ITDS is an electronic trade data interchange system authorized pursuant to section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, Public Law 109–347. The purpose of ITDS, as defined by Section 405 of the SAFE Port Act of 2006, "is to eliminate redundant information requirements, to efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by the United States Customs and Border Protection, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies." On October 13, 2015, CBP issued an interim final rule to amend its regulations to provide that, as of November 1, 2015, ACE is a CBP-authorized Electronic Data Interchange System which may be used for the filing of entries and entry summaries.[2]

Scope of the AD/CVD Italy Pasta Orders

On July 24, 1996, the Department published the notice of the *AD/CVD Italy Pasta Orders* in the **Federal Register** with nearly identical language regarding the scope of the orders.[3] In particular, the scope language covered:

> Certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.
>
> Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB) or by Bioagricoop scrl.
>
> On July 9, 1996, after the date of our final antidumping duty determination, Euro-USA Trading Co., Inc., of Pawcatuck, CT, submitted materials to the Department supporting its request for an exclusion for pasta certified to be "organic pasta." Among the documents submitted are a decree from the Italian Ministry of Agriculture and Forestry authorizing Bioagricoop scrl to certify foodstuffs as organic for the implementation of EEC Regulation 2029/91. Also submitted is a letter (with an accompanying translation into English) from the Director of Controls of Processing and Marketing Firms at Bioagricoop stating that the organization will take responsibility for its organic pasta certificates and will supply the necessary documentation to U.S. authorities. On this basis, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricoop scrl are excluded from the scope of this order.[4]
>
> The merchandise under order is currently classifiable under items 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

As noted in the language comprising the scope of the orders, our written description of the scope of the orders is dispositive. However, the notices published in connection with subsequent administrative reviews of the orders have contained minor differences in language regarding the identification of the authority that issues the organic certifications. Specifically, the most recent published final results in the CVD proceeding[5] states, with regard to this exclusion and certification for organic pasta, "{a}lso excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificiozione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazion Italiana per l'Agricoltra Biologica, or by Ambientale." By comparison, the most recent published final results in the AD proceeding[6] states, "{a}lso excluded are imports of organic pasta from Italy that are certified by a European Union (EU) authorized body and accompanied by a National Organic Program import certificate for organic products."

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[1] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 61 FR 38547 (July 24, 1996); and *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") From Italy,* 61 FR 38544 (July 24, 1996) (collectively, AD/CVD Italy Pasta Orders).

[2] *See Automated Commercial Environment (ACE) Filings for Electronic Entry/Entry Summary (Cargo Release and Related Entry),* 80 FR 61278 (October 13, 2015) (*Interim Final Rule*); and Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings, 81 FR 10264 (February 29, 2016) (General Notice).

[3] *See AD/CVD Italy Pasta Orders.*

[4] Note that a modified version of this paragraph has appeared in the scope description in all subsequent administrative reviews, which has no material impact on the scope's coverage.

[5] *See Certain Pasta From Italy: Final Results of Countervailing Duty Administrative Review; 2012,* 80 FR 11172 (March 2, 2015), and accompanying Issues and Decision Memorandum at "Scope of the Order."

[6] *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 8604 (February 18, 2015), and accompanying Issues and Decision Memorandum at "Scope of the Order."

In connection with the organic exclusion language, both the 2010 and 2010–2011 administrative reviews of the CVD and AD orders on pasta from Italy cite the same October 10, 2012, memorandum ("Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy"). The Department has placed a copy of that memorandum on the records of these changed circumstances reviews. In that memorandum, at page 2, the Department stated, ". . . we intend to update the scope language to clarify that organic pasta from Italy is excluded from the scope when accompanied by the appropriate NOP certificate issued by any EU control body or control authorities identified by the USDA as part of the U.S.-EU Partnership on Organic Trade . . ." The Department stated that the scope language for both orders would read: "Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body and accompanied by a National Organic Program import certificate for organic products."

Initiation and Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(d), the Department will conduct a changed circumstances review of an antidumping or countervailing duty order when it receives information which shows changed circumstances sufficient to warrant such a review. In this case, the Department has determined that the advent of ITDS constitutes sufficient circumstances to conduct a changed circumstances review of the *AD/CVD Italy Pasta Orders*. Further, the Department does not require any additional information to make a preliminary finding. For this reason, as permitted by 19 CFR 351.221(c)(3)(ii), the Department finds that expedited action is warranted and is conducting this review on an expedited basis by publishing preliminary results in conjunction with this notice of initiation.

Currently the scope of the *AD/CVD Italy Pasta Orders* requires that in order for a specific entry to be exempted from the AD and CVD orders based on the exclusion of organic pasta, the certifications must accompany the entry. Consistent with the ITDS initiative, which aims to streamline the information filed with the U.S. Government via ACE as part of the import and export process, the Department evaluated whether the organic certification submission requirement related to the *AD/CVD Italy Pasta Orders* may be simplified. Based on our evaluation, we have preliminarily determined that it is appropriate to convert the certification requirement from an Entry Summary submission requirement to a record-keeping requirement for the exporter and the importer, consistent with the Department of Agriculture's National Organic Program, and the ITDS' goal to streamline the import process.[7]

Under such a record-keeping requirement, both the exporter and the importer would be required to maintain a copy of the original certification in their respective records, as well as documentation supporting the certification, that would be subject to verification by the U.S. Government. Because this certification requirement would be a record-keeping requirement, the exporter and importer would be required to submit the certification in response to a request from CBP or the Department, in the form or manner required by the requesting agency. Additionally, the certification should be issued, signed and dated prior to the merchandise being exported from Italy. Entries for which an exporter or importer is unable to produce the required certification upon the request of CBP or the Department may be subject to antidumping or countervailing duties.

Additionally, the Department preliminarily proposes to update the exclusion language for organic pasta. Specifically, the Department proposes to remove the reference to the National Organic Program certificate because the documentation may change over time. Finally, the Department preliminarily determines to align the scope language of the *AD/CVD Italy Pasta Orders* to reflect the Department's intent that the same certification authority (or authorities) is acceptable for purposes of both orders and to reflect the change from an entry submission to a record-keeping requirement.

Based on the foregoing, we propose altering the organic pasta exclusion and certification language in the *AD/CVD Italy Pasta Orders* to read as follows:

> Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United State Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

The Department's proposed language is not intended to change any requirements under, or aspects of, the National Organic Program. If these preliminary results are upheld in the final results, the Department will revise the scope of the *AD/CVD Italy Pasta Orders* to reflect the aforementioned scope language.

Public Comment

Interested parties may submit case briefs in response to these preliminary results by no later than 14 calendar days after the date of publication of this notice in the **Federal Register.**[8] Rebuttals, limited to issues raised in the case briefs, may be filed by no later than five calendar days after the deadline for case briefs. Parties that submit written comments or rebuttals are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Parties who wish to comment on the preliminary results must file briefs electronically using ACCESS.[10] ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.[11]

Any interested party may submit a request for a hearing to the Assistant Secretary of Enforcement and Compliance using ACCESS within 14 days of publication of this notice in the **Federal Register.** Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.[12] Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[13]

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[7] *See the Organic Foods Production Act of 1990* (7 U.S.C., Chapter 94): § 6519. "Recordkeeping, investigations, and enforcement. (a) Recordkeeping. (1) In general, Except as otherwise provided in this chapter, each person who sells, labels, or represents any agricultural product as having been produced or handled using organic methods shall make available to the Secretary or the applicable governing State official, on request by the Secretary or official, all records associated with the agricultural product."

[8] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed. See 19 CFR 351.303(b).This applies to submission of rebuttal comments as well as any request for a hearing.

[9] *See* 19 CFR 351.309(c)(2) & (d)(2).

[10] *See* 19 CFR 351.303(b) and (f).

[11] *See* 19 CFR 351.303(b).

[12] *See* 19 CFR 351.303(b).

Final Results of the Review

In accordance with 19 CFR 351.216(e), the Department intends to issue the final results of this changed circumstances review not later than 270 days after the date on which the review is initiated, or within 45 days if all parties agree to our preliminary finding.

Notification to Parties

This initiation and preliminary results of review notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221(c)(3)(ii).

Dated: June 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the AD and CVD Orders on Certain Pasta From Italy[1]

Imports covered by this Order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the Order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this Order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the Order. Note 1. Pursuant to the Department's August 14, 2009, changed circumstances review, effective July 1, 2008, gluten free pasta is also excluded from the scope of the Order.[2] Note 2. Pursuant to the Department's May 12, 2011, changed circumstances review, effective January 1, 2009, gluten free pasta is also excluded from the scope of the Order.[3] Note 3. Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the Order. Note 4.

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United State Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

The merchandise subject to this order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to the Order is dispositive.

Note 1: *See* Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

Note 2: *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part,* 74 FR 41120 (August 14, 2009).

Note 3: *See Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part,* 76 FR 27634 (May 12, 2011).

Note 4: *See Certain Pasta From Italy: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews and Revocation, in Part,* 79 FR 58319, 58320 (September 29, 2014).

[FR Doc. 2016–14672 Filed 6–21–16; 8:45 am]

BILLING CODE 3510–DS–P

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[13] *See* 19 CFR 351.310(d).

[1] This scope language will be used in the antidumping and countervailing duty orders on pasta from Italy.

[2] This sentence is applicable only to the AD Italy Pasta Order.

[3] This sentence is applicable only to the CVD Italy Pasta Order.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–050]

Ammonium Sulfate From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci at (202) 482–2923, or William Horn at (202) 482–2615, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On May 25, 2016, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of ammonium sulfate from the People's Republic of China (PRC), filed in proper form on behalf of PCI Nitrogen, LLC (Petitioner). The CVD petition was accompanied by an antidumping duty (AD) petition, also concerning imports of ammonium sulfate from the PRC.[1] Petitioner is a domestic producer of ammonium sulfate.[2]

On May 31, 2016 and June 7, 2016 the Department requested information and clarification for certain areas of the CVD Petition.[3] Petitioner filed responses to these requests on June 3, 2016 and June 9, 2016, respectively.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that the Government of the PRC (GOC) is providing countervailable subsidies (within the meaning of sections 701 and 771(5) of the Act) with respect to imports of ammonium sulfate from the PRC, and that imports of ammonium sulfate from the PRC are materially injuring, and threaten material injury to, the domestic industry producing ammonium sulfate in the United States. Also, consistent with section 702(b)(1) of the Act, for those alleged programs on which we have initiated a CVD investigation, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and that Petitioner has demonstrated sufficient industry support with respect to the initiation of the investigation Petitioner is requesting.[5]

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[1] *See* "Petition for the Imposition of Antidumping and Countervailing Duties: Ammonium Sulfate from the People's Republic of China," dated May 25, 2016 (Petitions).

[2] *See* Volume I of the Petitions, at 1, and Exhibit I–1.

[3] *See* Letter from Robert Bolling to Petitioner, "Petition for the Imposition of Countervailing Duties on Imports of Ammonium Sulfate from the People's Republic of China: Supplemental Questions," dated May 31, 2016; *see also* Letter from Robert Bolling to Petitioner, "Petition for the Imposition of Countervailing Duties on Imports of Ammonium Sulfate from the People's Republic of China: Supplemental Questions," dated June 7, 2016.

[4] *See* Letter from Petitioner to Secretary of Commerce, "Ammonium Sulfate from the People's Republic of China/Petitioner's Response to the Department's Questions Regarding the Petition," dated June 3, 2016 (CVD Supplement); *see also* Letter from Petitioner to Secretary of Commerce, "Ammonium Sulfate from the People's Republic of China/Petitioner's Response to the Department's Questions Regarding the Petition," dated June 9, 2016 (CVD Second Supplement).

[5] *See* "Determination of Industry Support for the Petition" below.

Period of Investigation

The period of investigation is January 1, 2015, through December 31, 2015.[6]

Scope of the Investigation

The product covered by this investigation is ammonium sulfate from the PRC. For a full description of the scope of this investigation, *see* "Scope of Investigation" at Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[7]

As discussed in the preamble to the Department's regulations,[8] we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope). The Department will consider all comments received from interested parties, and if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Monday, July 4, 2016, which is 20 calendar days from the signature date of this notice. However, as Monday July 4, 2016, is a Federal Holiday, interested parties may submit comments by 5:00 p.m. ET the next business day, Tuesday, July 5, 2016.[9] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, July 15, 2016. The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent AD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically-filed document must be received successfully in its entirety by the time and date it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to section 702(b)(4)(A)(i) of the Act, the Department notified representatives of the GOC of the receipt of the Petition. Also, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department provided representatives of the GOC the opportunity for consultations with respect to the CVD petition.[11] The GOC did not request consultations or submit comments to the Department on the alleged subsidy programs in lieu of consultations.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that ammonium sulfate, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[14]

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[6] *See* 19 CFR 351.204(b)(2).

[7] *See* Letter from Robert Bolling to Petitioner "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Ammonium Sulfate from the People's Republic of China: Supplemental Questions," dated May 27, 2016 .

[8] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

[9] *See* Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

[10] *See* 19 CFR 351.303 (for general filing requirements); *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011), for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf*.

[11] *See* Letter of invitation from the Department, "Countervailing Duty Petition on Ammonium Sulfate from the People's Republic of China," dated May 31, 2016.

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in Appendix I of this notice. Petitioner and supporters of the Petition provided their own production of the domestic like product in 2015.[15] Petitioner also provided data from The Fertilizer Institute to determine total 2015 production of the domestic like product by the entire domestic industry.[16] To establish industry support, Petitioner compared the production of Petitioner and supporters of the Petition to the total 2015 production of the domestic like product for the entire domestic industry.[17] We relied on data Petitioner provided for purposes of measuring industry support.[18]

Our review of the data provided in the Petition, General Issues Supplement, and other information readily available to the Department indicates that Petitioner has established industry support.[19] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[22] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate.[23]

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price suppression or depression, lost sales and revenues, decline in shipments and production, and decline in financial performance.[25] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[26]

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to Petitioner supporting the allegations.

Petitioner alleges that producers/exporters of ammonium sulfate in the PRC benefit from countervailable subsidies bestowed by the GOC. The Department examined the Petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of ammonium sulfate from the PRC received countervailable subsidies from the GOC and various authorities thereof.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[27] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[28] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.[29]

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[14] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Ammonium Sulfate from the People's Republic of China (PRC CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Ammonium Sulfate from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[15] *See* PRC CVD Initiation Checklist, at Attachment II.

[16] *See* PRC CVD Initiation Checklist, at Attachment II.

[17] *See* Volume I of the Petition, at 2–3, and Exhibits I–3, I–4, and I–5; *see also* Letter from Petitioner to Secretary of Commerce, "Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Ammonium Sulfate from the People's Republic of China: Supplemental Questions," dated June 1, 2016 (General Issues Supplement), at 5.

[18] *See* Volume I of the Petition, at 2–3, and Exhibits I–3, I–4, and I–5; *see also* General Issues Supplement, at 5. For further discussion, *see* PRC CVD Initiation Checklist.

[19] *See* PRC CVD Initiation Checklist, at Attachment II.

[20] *See* section 702(c)(4)(D) of the Act; *see also* PRC CVD Initiation Checklist, at Attachment II.

[21] *See* PRC CVD Initiation Checklist, at Attachment II.

[22] *Id.*

[23] *See* PRC CVD Initiation Checklist, at Attachment II.

[24] *See* General Issues Supplement, at 5–6 and Exhibit I–S8.

[25] *See* Volume I of the Petition, at 15–23 and Exhibits I–13 through I–19; *see also* General Issues Supplement, at 5–6 and Exhibit I–S8.

[26] *See* PRC CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Ammonium Sulfate from the People's Republic of China (Attachment III).

[27] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[28] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl*.

[29] *Id.*, at 46794–95.

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on all 37 alleged programs in the PRC. For a full discussion of the basis for our decision to initiate on each program, *see* the PRC CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

Petitioner named 95 companies as producers/exporters of ammonium sulfate from the PRC.[30] Following standard practice in CVD investigations, the Department will, where appropriate, select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of ammonium sulfate during the period of investigation under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope in Appendix I, below. For this investigation, the Department will release CBP data for U.S. imports of subject merchandise during the period of investigation under the following HTSUS numbers: 3102.21.0000.[31] We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five business days of the announcement of this **Federal Register** notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found at *http://enforcement.trade.gov/apo/.*

Interested parties may submit comments regarding the CBP data and respondent selection by 5:00 p.m. ET on the seventh calendar day after publication of this notice. Comments must be filed in accordance with the filing requirements stated above. If respondent selection is necessary, we intend to base our decision regarding respondent selection upon comments received from interested parties and our analysis of the record information within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each known exporter (as named in the Petition), consistent with 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of ammonium sulfate from the PRC are materially injuring, or threatening material injury to, a U.S. industry.[32] A negative ITC determination will result in the investigation being terminated;[33] otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The regulation requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties should review the regulations prior to submitting factual information in this investigation.

Extension of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[34] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[35] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

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[30] *See* Volume I of the Petition, at Exhibit I–10; *see also* General Issues Supplement at Exhibit I–S1.

[31] *See* General Issues Supplement at Exhibit I–S2.

[32] *See* section 703(a)(2) of the Act.

[33] *See* section 703(a)(1) of the Act.

[34] *See* section 782(b) of the Act.

[35] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) ("*Final Rule*"); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

Dated: June 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is ammonium sulfate in all physical forms, with or without additives such as anti-caking agents. Ammonium sulfate, which may also be spelled as ammonium sulphate, has the chemical formula $(NH_4)_2SO_4$.

The scope includes ammonium sulfate that is combined with other products, including by, for example, blending (*i.e.*, mixing granules of ammonium sulfate with granules of one or more other products), compounding (*i.e.*, when ammonium sulfate is compacted with one or more other products under high pressure), or granulating (incorporating multiple products into granules through, *e.g.*, a slurry process). For such combined products, only the ammonium sulfate component is covered by the scope of this investigation.

Ammonium sulfate that has been combined with other products is included within the scope regardless of whether the combining occurs in countries other than China.

Ammonium sulfate that is otherwise subject to this investigation is not excluded when commingled (*i.e.*, mixed or combined) with ammonium sulfate from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The Chemical Abstracts Service (CAS) registry number for ammonium sulfate is 7783–20–2.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3102.21.0000. Although this HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2016–14670 Filed 6–21–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–049]

Ammonium Sulfate From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective date: June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas Martin at (202) 482–3936 or Andrew Martinez (202) 482–3627, AD/CVD Operations, Enforcement & Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On May 25, 2016, the Department of Commerce (the Department) received an antidumping duty (AD) petition concerning imports of ammonium sulfate from the People's Republic of China (PRC), filed in proper form on behalf of PCI Nitrogen, LLC (PCI or Petitioner).[1] The AD petition was accompanied by a countervailing duty (CVD) petition for ammonium sulfate from the PRC.[2] Petitioner is a domestic producer of ammonium sulfate.[3]

On May 27, 2016 and June 3, 2016, the Department requested additional information and clarification of certain areas of the Petition.[4] Petitioner filed responses to these requests on June 1 and 6, 2016.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that imports of ammonium sulfate from the PRC are being, or are likely to be, sold in the United States at less-than-fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that Petitioner demonstrated sufficient industry support with respect to the initiation of the AD investigation that Petitioner is requesting.[6]

Period of Investigation

Because the Petition was filed on May 25, 2016, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is October 1, 2015 through March 31, 2016.

Scope of the Investigation

The product covered by this investigation is ammonium sulfate from the PRC. For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[7]

As discussed in the preamble to the Department's regulations,[8] we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Monday, July 4, 2016, which is 20 calendar days from the signature date of this notice. However, as Monday July 4, 2016, is a Federal Holiday, interested parties may submit comments by 5:00 p.m. ET the next business day, Tuesday, July 5, 2016.[9] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, July 15, 2016. The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent CVD investigation.

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[1] *See* the Petition for the Imposition of Antidumping and Countervailing Duties on Ammonium Sulfate from the People's Republic of China, dated May 25, 2016 (the Petition) at Volumes I and II.

[2] *Id.*, at Volume III.

[3] *Id.*, at Volume I, at 1.

[4] *See* the Letter from the Department to Petitioner entitled, "Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Ammonium Sulfate from the People's Republic of China: Supplemental Questions," dated May 27, 2016 (General Issues Supplemental Questionnaire); *see also* the Letter from the Department to Petitioner entitled, "Petition for the Imposition of Antidumping Duties on Imports of Ammonium Sulfate from the People's Republic of China: Supplemental Questions," dated May 27, 2016 (AD Supplemental Questionnaire); *see also* the Letter from the Department to Petitioner entitled, "Petition for the Imposition of Antidumping Duties on Imports of Ammonium Sulfate from the People's Republic of China: Supplemental Questions," dated June 3, 2016 (Second AD Supplemental Questionnaire).

[5] *See* the Letter from Petitioner to the Department entitled, "Ammonium Sulfate from the People's Republic of China/Petitioner's Response to the Department's Questions Regarding the Petition," dated June 1, 2016 (General Issues Supplement); *see also* the Letter from Petitioner to the Department entitled, "Ammonium Sulfate from the People's Republic of China/Petitioner's Response to the Department's Questions Regarding the Petition," dated June 1, 2016 (AD Supplement) ; *see also* the Letter from Petitioner to the Department entitled, "Ammonium Sulfate from the People's Republic of China/Petitioner's Response to the Department's Questions Regarding the Petition," dated June 6, 2016 (Second AD and General Issues Supplement).

[6] *See* the "Determination of Industry Support for the Petition" section below.

[7] *See* General Issues Supplemental Questionnaire at 2, and General Issues Supplement at 2–4, and Exhibits I–S2 and I–S3.

[8] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement & Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of ammonium sulfate to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe ammonium sulfate, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. ET on Monday, July, 4, 2016, which is twenty (20) calendar days from the signature date of this notice. However, as Monday, July 4, 2016, is a Federal Holiday, interested parties may submit comments by 5:00 p.m. ET the next business day, Tuesday, July 5, 2016.[11] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Tuesday, July 12, 2016. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the record of this less-than-fair-value investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

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[9] *See* Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[11] *See* Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that ammonium sulfate, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in Appendix I of this notice. Petitioner and supporters of the Petition provided their own production data of the domestic like product in 2015. Petitioner also provided data from The Fertilizer Institute to determine total 2015 production of the domestic like product by the entire U.S. domestic industry. To establish industry support, Petitioner compared the production of Petitioner and supporters of the Petition to the total 2015 production of the domestic like product for the entire domestic industry.[15] We relied on data Petitioner provided for purposes of measuring industry support.[16]

Our review of the data provided in the Petition, General Issues Supplement, and other information readily available to the Department indicates that Petitioner has established industry support.[17] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).[18] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[19] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[20] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting that the Department initiate.[21]

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[22] Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price suppression or depression, lost sales and revenues, decline in shipments and production, and decline in financial performance.[23] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[24]

Allegations of Sales at Less-Than-Fair Value

The following is a description of the allegation of sales at less-than-fair value upon which the Department based its decision to initiate an investigation of imports of ammonium sulfate from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the PRC AD initiation checklist, at Attachment III.

Export Price

Petitioner based export price (EP) on six average unit values (AUVs). Specifically, Petitioner based one U.S. EP on the AUV of U.S. imports from the PRC obtained from ITC Dataweb under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3102.21.0000 (the relevant HTSUS subheading for imports of ammonium sulfate) for the period of October 2015 through March 2016 (*i.e.*, the POI). Petitioner also based EP on five transaction-specific AUVs for shipments of ammonium sulfate identified from the PRC under HTSUS subheading 3102.21.0000 during the POI. Petitioner obtained ship manifest data from the U.S. Customs and Border Protection's (CBP) Automated Manifest System (AMS), via Datamyne. Petitioner then linked monthly U.S. port-specific import statistics (obtained from the U.S. Census Bureau (Census) via Datamyne), for imports of ammonium sulfate entered under HTSUS subheading 3102.21.0000 to five shipments by the PRC exporters identified in the ship manifest data.[25] These five shipments correspond with the POI Dataweb information. Because the overall POI AUV and the transaction-specific AUVs were based on FOB China port terms, Petitioner adjusted EP to deduct foreign inland freight and brokerage and handling at the port of exportation.[26]

Normal Value

Petitioner stated that the Department has long treated the PRC as a non-market economy (NME) country.[27] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties, and the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

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[14] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Ammonium Sulfate from the People's Republic of China (PRC AD Initiation Checklist), at Attachment II, "Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Ammonium Sulfate from the People's Republic of China," (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[15] *See* Volume I of the Petition, at 2–3, and Exhibits I–3, I–4, and I–5; *see also* General Issues Supplement, at 5.

[16] *Id.* For further discussion, *see* PRC AD Initiation Checklist.

[17] *See* PRC AD Initiation Checklist, at Attachment II.

[18] *See* section 732(c)(4)(D) of the Act; *see also* PRC AD Initiation Checklist, at Attachment II.

[19] *See* PRC AD Initiation Checklist, at Attachment II.

[20] *Id.*

[21] *Id.*

[22] *See* General Issues Supplement, at 5–6 and Exhibit I–S8.

[23] *See* Volume I of the Petition, at 15–23 and Exhibits I–13 through I–19; *see also* General Issues Supplement, at 5–6 and Exhibit I–S8.

[24] *See* PRC AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Ammonium Sulfate from the People's Republic of China.

[25] *See* PRC AD Initiation Checklist at Attachment III.

[26] *See* Second AD and General Issues Supplement at 6.

[27] *See* Volume II of Petition, at 2.

Petitioner claims that South Africa is an appropriate surrogate country because it is a market economy that is at a level of economic development comparable to that of the PRC and it is a significant producer of comparable merchandise.[28]

Based on the information provided by Petitioner, we believe it is appropriate to use South Africa as a surrogate country for initiation purposes. Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Because Petitioner claims that information regarding the volume of inputs consumed by PRC producers/exporters is not reasonably available, Petitioner relies on its own, actual consumption of direct materials, labor, and energy as an estimate of the PRC manufacturers' FOPs, claiming that it utilizes a similar production method to that utilized by PRC producers to produce ammonium sulfate.[29]

Valuation of Raw Materials

Petitioner valued direct materials based on publicly available data for imports into South Africa obtained from the Global Trade Atlas (GTA) for the period October 1, 2015 to March 31, 2016 (*i.e.,* the POI).[30] Petitioner excluded all import data from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies, and from countries previously determined by the Department to be NME countries. In addition, in accordance with the Department's practice, Petitioner excluded imports that were labeled as originating from an unidentified country.[31] To account for foreign inland freight from port to producer, Petitioner determined the weighted-average distance between the ten largest PRC ammonium sulfate producers and their closest respective ports and applied this distance to the South African inland freight charges reported in *Doing Business 2016, Economic Profile: South Africa,* published by the World Bank.[32] The Department determines that the surrogate values used by Petitioner are reasonably available and, thus, are acceptable for purposes of initiation.

Valuation of Labor

Petitioner relied on 2013 data from the International Labor Organization's (ILO) ILOSTAT data service[33] to derive a South African hourly labor rate, and then inflated it using the South African consumer price index.[34]

Valuation of Packing Materials

Petitioner derived the packing material input amounts based upon information reported in ship manifest data and U.S. import statistics.[35] Petitioner valued the direct materials associated with packing based on publicly-available data for imports into South Africa obtained from the GTA for the POI.[36] Petitioner calculated packing labor in the same manner as direct labor.[37]

Valuation of Energy

Petitioner valued electricity and water using 2015/16 electricity and water rates reported by the energy authority Govan Mbeki Local Municipality;[38] and natural gas and steam using the same methodology and source used in a recent Department case involving South Africa as surrogate country.[39] Where applicable, Petitioner converted values from South African Rand to U.S. dollars using a POI-average exchange rate and adjusted for inflation in South Africa using a POI-average consumer price index.

Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

Petitioner valued factory overhead, selling, general, and administrative costs, and profit using publicly available financial statements from a South African company Sasol Limited (Sasol). Sasol is a major producer of ammonium sulfate which utilizes the synthetic process to create ammonium sulfate which involves reacting ammonia and sulfuric acid.[40]

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of ammonium sulfate from the PRC are being, or are likely to be, sold in the United States at less-than-fair value. Based on comparisons of EP to NV, in accordance with section 773(c) of the Act, the estimated dumping margin for ammonium sulfate from the PRC ranges from 250.81 to 493.46 percent.[41]

Initiation of Less-Than-Fair-Value Investigation

Based upon the examination of the AD Petition on ammonium sulfate from the PRC, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of ammonium sulfate from the PRC are being, or are likely to be, sold in the United States at less-than-fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we intend to make our preliminary determination no later than 140 days after the date of this initiation.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[42] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[43] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this AD investigation.[44]

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[28] *See* Volume II of Petition, at 2–4.

[29] *See* Volume II of Petition, at 6–7; *see also* AD Supplement at 1–3 and Exhibits II–S1 and II–S–2.

[30] *Id.,* at 8 and Exhibit II–11; *see also* AD Supplement at 4–5 and Exhibit II–S5.

[31] *Id.*

[32] *See* Volume II of Petition, at 8 and Exhibits II–8 and II–11.

[33] The 2013 publication of ILOSTAT contains the most current data from this source. *See* Volume II of Petition at 8.

[34] *See* Volume II of Petition, at 8 and Exhibits II–12 and II–9; *see also* AD Supplement, at 7–8 and Exhibit II–S7.

[35] *See* Volume II of Petition, at 9–10 and Exhibit II–15.

[36] *See* AD Supplement at 5–6 and Exhibit II–S5.

[37] *See* Volume II of Petition at Exhibit II–9.

[38] *Id.,* at 8–9 and Exhibit II–13A.

[39] *See* AD Supplement at 7–8 and Exhibits II–S6B, II–S6C, and II–S6A.

[40] *See* Volume II of Petition, at 9 and Exhibit II–14; *see also* AD Supplement at 8–9 and Exhibit II–S8.

[41] *See* AD Supplement at Exhibit II–S3.

[42] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[43] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

Respondent Selection

Petitioner named 95 companies as producers/exporters of ammonium sulfate.[45] In accordance with our standard practice for respondent selection in cases involving NME countries, we intend to issue quantity and value (Q&V) questionnaires to producers/exporters of merchandise subject to the investigation,[46] and base respondent selection on the responses received. In addition, the Department will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance Web site at *http://www.trade.gov/enforcement/news.asp.*

Producers/exporters of ammonium sulfate from the PRC that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement & Compliance Web site. The Q&V response must be submitted by the relevant PRC exporters/producers no later than June 28, 2016, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[47] The specific requirements for submitting a separate-rate application in the PRC investigation are outlined in detail in the application itself, which is available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[48] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that respondents from the PRC submit a response to both the Q&V questionnaire and the separate-rate application by their respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[49]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of the PRC via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of ammonium sulfate from the PRC are materially injuring or threatening material injury to a U.S. industry.[50] A negative ITC determination will result in the investigation being terminated;[51] otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[52] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[53] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790

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[44] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[45] *See* Second AD and General Issues Supplement at Exhibit II–2S3.

[46] *See* Appendix I, "Scope of the Investigation."

[47] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[48] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that "the Secretary may request any person to submit factual information at any time during a proceeding," this deadline is now 30 days.

[49] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[50] *See* section 733(a) of the Act.

[51] *Id.*

[52] *See* 19 CFR 351.301(b).

[53] *See* 19 CFR 351.301(b)(2).

(September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm*, prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[54] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petition filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[55] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is ammonium sulfate in all physical forms, with or without additives such as anti-caking agents. Ammonium sulfate, which may also be spelled as ammonium sulphate, has the chemical formula $(NH_4)_2SO_4$.

The scope includes ammonium sulfate that is combined with other products, including by, for example, blending (*i.e.*, mixing granules of ammonium sulfate with granules of one or more other products), compounding (*i.e.*, when ammonium sulfate is compacted with one or more other products under high pressure), or granulating (incorporating multiple products into granules through, *e.g.*, a slurry process). For such combined products, only the ammonium sulfate component is covered by the scope of this investigation.

Ammonium sulfate that has been combined with other products is included within the scope regardless of whether the combining occurs in countries other than China.

Ammonium sulfate that is otherwise subject to this investigation is not excluded when commingled (*i.e.*, mixed or combined) with ammonium sulfate from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The Chemical Abstracts Service (CAS) registry number for ammonium sulfate is 7783–20–2.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3102.21.0000. Although this HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2016–14668 Filed 6–21–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–825]

Stainless Steel Bar From Brazil: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar (SSB) from Brazil.[1] The period of review (POR) is February 1, 2014, through January 31, 2015. The review covers one producer/exporter of the subject merchandise, Villares Metals S.A. (Villares). We invited parties to comment on the *Preliminary Results*. None were received. Accordingly, for the final results, we continue to find that Villares did not make sales of subject merchandise at less than normal value.

DATES: Effective June 22, 2016.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1757, and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2016, the Department published the *Preliminary Results* of the administrative review. The Department gave interested parties an opportunity to comment on the *Preliminary Results*. We received no comments. The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is SSB. The term SSB with respect to the order means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process. Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections. The SSB subject to the order is currently classifiable under subheadings 7222.10.00, 7222.11.00, 7222.19.00, 7222.20.00, 7222.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

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[54] *See* section 782(b) of the Act.

[55] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* "Department's Regulation on Certification—19 CFR 351.303(g): Frequently Asked Questions (FAQs)" regarding the *Final Rule*, available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf*.

[1] *See Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 12465 (March 9, 2016) (*Preliminary Results*).

Final Results of Review

The Department made no changes to its calculations announced in the *Preliminary Results.* As a result of this review, we determine that a weighted-average dumping margin of 0.00 percent exists for Villares for the period February 1, 2014, through January 31, 2015.

Assessment

In accordance with 19 CFR 351.212 and the *Final Modification,*[2] the Department will instruct U.S. Customs and Border Protection (CBP) to liquidate all appropriate entries for Villares without regard to antidumping duties.

For entries of subject merchandise during the POR produced by Villares for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of SSB from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Villares will be 0.00 percent, the weighted average dumping margin established in the final results of this administrative review; (2) for other manufacturers and exporters covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 19.43 percent, the all-others rate established in the less than fair value investigation.[3] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 15, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–14811 Filed 6–21–16; 8:45 am]

BILLING CODE 3510–DS–P

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[2] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification*).

[3] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Brazil,* 59 FR 66914 (December 28, 1994).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 10, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand.[1] The review covers 163 producers/exporters of the subject merchandise. The period of review (POR) is February 1, 2014, through January 31, 2015.

No interested party submitted comments on the preliminary results. However, we revised the computer program for Mayao to correct an error with respect to the printing of the assessment rate calculations. Finally, we find that four companies had no shipments of subject merchandise during the POR.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Alice Maldonado, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5973 and (202) 482–4682, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers 163 producers/exporters of the subject merchandise. The respondents which the Department selected for individual examination are Mayao[2] and Thai Union.[3] The respondents which were not selected for individual examination are listed in the "Final Results of the Review" section of this notice.

On March 10, 2016, the Department published the *Preliminary Results.* We invited parties to comment on the preliminary results of the review.[4] No interested party submitted comments. Accordingly, no decision memorandum accompanies this **Federal Register** notice.[5] However, we revised the computer program for Mayao to correct an error with respect to the printing of the assessment rate calculations. The Department conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

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[1] *See Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Rescission of Review, in Part, and Preliminary Determination of No Shipments; 2014–2015,* 81 FR 12696 (March 10, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] Mayao consists of the following companies: A Foods 1991 Co., Limited and May Ao Foods Co., Ltd.

[3] Thai Union consists of the following affiliated companies: Thai Union Frozen Products Co., Ltd., Thai Union Seafood Company Limited, Pakfood Public Company Limited, Asia Pacific (Thailand) Co., Ltd., Chaophraya Cold Storage Co. Ltd., Okeanos Co. Ltd., Okeanos Food Co. Ltd., and Takzin Samut Co. Ltd.

[4] *See Preliminary Results,* 81 FR at 12700.

[5] For further details of the issues addressed in this proceeding, *see Preliminary Results,* 81 FR at 12696, and accompanying Preliminary Decision Memorandum.

Scope of the Order

The scope of this order includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[6] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (Penaeus vannemei), banana prawn (Penaeus merguiensis), fleshy prawn (Penaeus chinensis), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (Penaeus monodon), redspotted shrimp (Penaeus brasiliensis), southern brown shrimp (Penaeus subtilis), southern pink shrimp (Penaeus notialis), southern rough shrimp (Trachypenaeus curvirostris), southern white shrimp (Penaeus schmitti), blue shrimp (Penaeus stylirostris), western white shrimp (Penaeus occidentalis), and Indian white prawn (Penaeus indicus).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations (including dusted shrimp), which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.[7]

Determination of No Shipments

As noted in the *Preliminary Results,* we received no shipment claims from four companies involved in this administrative review: Gallant Ocean (Thailand) Co., Ltd. (Gallant Ocean), Lucky Union Foods Co., Ltd. (Lucky Union), Marine Gold Products Ltd. (Marine Gold),[8] and Thai Union Manufacturing Company Limited (Thai Union Manufacturing). In the *Preliminary Results,* we preliminarily determined that Gallant Ocean and Lucky Union had no reviewable transactions during the POR.[9] We received no comments from interested parties with respect to these claims. Therefore, because we find that the record indicates that these companies did not export subject merchandise to the United States during the POR, we continue to find that Gallant Ocean and Lucky Union had no reviewable transactions during the POR.

With respect to Marine Gold and Thai Union Manufacturing, in the *Preliminary Results,* there was insufficient evidence on the record to conclude that these companies made no shipments of subject merchandise during the POR and we continued to include them in the administrative review.[10] Subsequently, we received information from U.S. Customs and Border Protection (CBP) confirming Marine Gold's and Thai Union Manufacturing's no shipment claims.[11] We received no comments from interested parties with respect to this information. Therefore, because we find that the record indicates that Marine Gold and Thai Union Manufacturing also did not export subject merchandise to the United States during the POR, we find that they had no reviewable transactions during the POR.

Final Results of the Review

We are assigning the following dumping margins to the respondents for the period February 1, 2014, through January 31, 2015, as follows:

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[6] "Tails" in this context means the tail fan, which includes the telson and the uropods.

[7] On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (CIT) decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. *See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23277 (April 26, 2011); *see also Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011.

[8] Shrimp produced and exported by Marine Gold was excluded from the antidumping duty order effective February 1, 2012. *See Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of Order (in Part); 2011–2012,* 78 FR 42497, 42499 (July 16, 2013). Accordingly, we are conducting this administrative review with respect to Marine Gold only for shrimp produced in Thailand where Marine Gold acted as either the producer or the exporter (but not both).

[9] *See Preliminary Results,* 81 FR at 12697.

[10] *See id.*

[11] *See* the memo to the file entitled, "Certain Frozen Warmwater Shrimp from Thailand: 2014–2015 Administrative Review—U.S. Entry Documents Placed on the Record," dated April 14, 2016.

Producer/exporter	Dumping margin (percent)
A Foods 1991 Co., Limited/May Ao Foods Co., Ltd	1.36
Thai Union Frozen Products Public Co., Ltd./Thai Union Seafood Co., Ltd./Pakfood Public Company Limited/Okeanos Food Co., Ltd./Okeanos Co. Ltd./Asia Pacific (Thailand) Co., Ltd.,/Chaophraya Cold Storage Co. Ltd./Takzin Samut Co. Ltd	0.00

Review-Specific Average Rate Applicable to the Following Non-Selected Companies:[12]

Producer/exporter	Dumping margin (percent)
A. Wattanachai Frozen Products Co., Ltd	1.36
A.P. Frozen Foods Co., Ltd	1.36
A.S. Intermarine Foods Co., Ltd	1.36
ACU Transport Co., Ltd	1.36
Ampai Frozen Foods Co., Ltd	1.36
Anglo-Siam Seafoods Co., Ltd	1.36
Apex Maritime (Thailand) Co., Ltd	1.36
Apitoon Enterprise Industry Co., Ltd	1.36
Applied DB	1.36
Asian Seafood Coldstorage (Sriracha)	1.36
Asian Seafoods Coldstorage Public Co., Ltd./Asian Seafoods Coldstorage (Suratthani) Co./STC Foodpak Ltd	1.36
Assoc. Commercial Systems	1.36
B.S.A. Food Products Co., Ltd	1.36
Bangkok Dehydrated Marine Product Co., Ltd	1.36
C Y Frozen Food Co., Ltd	1.36
C.P. Mdse	1.36
C.P. Merchandising Co., Ltd	1.36
CP Retailing and Marketing Co	1.36
C.P. Intertrade Co	1.36
Calsonic Kansei (Thailand) Co., Ltd	1.36
Century Industries Co., Ltd	1.36
Chaivaree Marine Products Co., Ltd	1.36
Chaiwarut Company Limited	1.36
Charoen Pokphand Foods Public Co., Ltd	1.36
Charoen Pokphand Petrochemical Co., Ltd	1.36
Chonburi LC	1.36
Chue Eie Mong Eak	1.36
Commonwealth Trading Co., Ltd	1.36
Core Seafood Processing Co., Ltd	1.36
CPF Food Products Co., Ltd	1.36
Crystal Frozen Foods Co., Ltd and/or Crystal Seafood	1.36
Daedong (Thailand) Co. Ltd	1.36
Daiei Taigen (Thailand) Co., Ltd	1.36
Daiho (Thailand) Co., Ltd	1.36
Dynamic Intertransport Co., Ltd	1.36
Earth Food Manufacturing Co., Ltd	1.36
F.A.I.T. Corporation Limited	1.36
Far East Cold Storage Co., Ltd	1.36
Fimex VN	1.36
Findus (Thailand) Ltd	1.36
Fortune Frozen Foods (Thailand) Co., Ltd	1.36
Frozen Marine Products Co., Ltd	1.36
Gallant Ocean (Thailand) Co., Ltd	*
Gallant Seafoods Corporation	1.36
Global Maharaja Co., Ltd	1.36
Golden Sea Frozen Foods Co., Ltd	1.36
Golden Thai Imp. & Exp. Co., Ltd	1.36
Good Fortune Cold Storage Co. Ltd	1.36
Good Luck Product Co., Ltd	1.36
Grobest Frozen Foods Co., Ltd	1.36
Gulf Coast Crab Intl	1.36
H.A.M. International Co., Ltd	1.36
Haitai Seafood Co., Ltd	1.36
Handy International (Thailand) Co., Ltd	1.36
Heng Seafood Limited Partnership	1.36
Heritrade	1.36
HIC (Thailand) Co., Ltd	1.36
High Way International Co., Ltd	1.36
I.T. Foods Industries Co., Ltd	1.36
Inter-Oceanic Resources Co., Ltd	1.36

Producer/exporter	Dumping margin (percent)
Inter-Pacific Marine Products Co., Ltd	1.36
I.S.A. Value Co., Ltd	1.36
K & U Enterprise Co., Ltd	1.36
K Fresh	1.36
K. D. Trading Co., Ltd	1.36
K.L. Cold Storage Co., Ltd	1.36
KF Foods Limited	1.36
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd	1.36
Kibun Trdg	1.36
Kingfisher Holdings Ltd	1.36
Kitchens of the Oceans (Thailand) Company, Ltd	1.36
Klang Co., Ltd	1.36
Kongphop Frozen Foods Co., Ltd	1.36
Lee Heng Seafood Co., Ltd	1.36
Leo Transports	1.36
Li-Thai Frozen Foods Co., Ltd	1.36
Lucky Union Foods Co., Ltd	*
Magnate & Syndicate Co., Ltd	1.36
Mahachai Food Processing Co., Ltd	1.36
Mahachai Marine Foods Co., Ltd	1.36
Marine Gold Products Ltd.[13]	*
Merit Asia Foodstuff Co., Ltd	1.36
Merkur Co., Ltd	1.36
Ming Chao Ind Thailand	1.36
N&N Foods Co., Ltd	1.36
N.R. Instant Produce Co., Ltd	1.36
Namprik Maesri Ltd. Part	1.36
Narong Seafood Co., Ltd	1.36
Nongmon SMJ Products	1.36
Ongkorn Cold Storage Co., Ltd./Thai-Ger Marine Co., Ltd	1.36
Pacific Queen Co., Ltd	1.36
Pakpanang Coldstorage Public Co., Ltd	1.36
Penta Impex Co., Ltd	1.36
Pinwood Nineteen Ninety Nine	1.36
Piti Seafood Co., Ltd	1.36
Premier Frozen Products Co., Ltd	1.36
Preserved Food Specialty Co., Ltd	1.36
Queen Marine Food Co., Ltd	1.36
Rayong Coldstorage (1987) Co., Ltd	1.36
S&D Marine Products Co., Ltd	1.36
S&P Aquarium	1.36
S&P Syndicate Public Company Ltd	1.36
S. Chaivaree Cold Storage Co., Ltd	1.36
S. Khonkaen Food Industry Public Co., Ltd and/or S. Khonkaen Food Ind. Public	1.36
S.K. Foods (Thailand) Public Co. Limited	1.36
Samui Foods Company Limited	1.36
Saota Seafood Factory	1.36
SB Inter Food Co., Ltd	1.36
SCT Co., Ltd	1.36
Sea Bonanza Food Co., Ltd	1.36
SEA NT'L CO., LTD	1.36
Seafoods Enterprise Co., Ltd	1.36
Seafresh Fisheries/Seafresh Industry Public Co., Ltd	1.36
Search and Serve	1.36
Sethachon Co., Ltd	1.36
Shianlin Bangkok Co., Ltd	1.36
Shing Fu Seaproducts Development Co	1.36
Siam Food Supply Co., Ltd	1.36
Siam Haitian Frozen Food Co., Ltd	1.36
Siam Intersea Co., Ltd	1.36
Siam Marine Products Co. Ltd	1.36
Siam Ocean Frozen Foods Co. Ltd	1.36
Siamchai International Food Co., Ltd	1.36
Smile Heart Foods Co. Ltd	1.36
SMP Products, Co., Ltd	1.36
Star Frozen Foods Co., Ltd	1.36
Starfoods Industries Co., Ltd	1.36
Suntechthai Intertrading Co., Ltd	1.36
Surapon Foods Public Co., Ltd./Surat Seafoods Public Co., Ltd	1.36
Surapon Nichirei Foods Co., Ltd	1.36
Suratthani Marine Products Co., Ltd	1.36
Suree Interfoods Co., Ltd	1.36
T.S.F. Seafood Co., Ltd	1.36

Producer/exporter	Dumping margin (percent)
Tep Kinsho Foods Co., Ltd	1.36
Teppitak Seafood Co., Ltd	1.36
Tey Seng Cold Storage Co., Ltd	1.36
Thai Agri Foods Public Co., Ltd	1.36
Thai Hanjin Logistics Co., Ltd	1.36
Thai Mahachai Seafood Products Co., Ltd	1.36
Thai Ocean Venture Co., Ltd	1.36
Thai Patana Frozen	1.36
Thai Prawn Culture Center Co., Ltd	1.36
Thai Royal Frozen Food Co., Ltd	1.36
Thai Spring Fish Co., Ltd	1.36
Thai Union Manufacturing Company Limited	*
Thai World Imports and Exports Co., Ltd	1.36
Thai Yoo Ltd., Part	1.36
The Siam Union Frozen Foods Co., Ltd	1.36
The Union Frozen Products Co., Ltd./Bright Sea Co., Ltd	1.36
Trang Seafood Products Public Co., Ltd	1.36
Transamut Food Co., Ltd	1.36
Tung Lieng Tradg	1.36
United Cold Storage Co., Ltd	1.36
UTXI Aquatic Products Processing Company	1.36
V. Thai Food Product Co., Ltd	1.36
Wann Fisheries Co., Ltd	1.36
Xian-Ning Seafood Co., Ltd	1.36
Yeenin Frozen Foods Co., Ltd	1.36
YHS Singapore Pte	1.36
ZAFCO TRDG	1.36

* No shipments or sales subject to this review.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), where Mayao and Thai Union reported the entered value for their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where Mayao and Thai Union did not report entered value, we calculated the entered value in order to calculate the assessment rates. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[14]

For the companies which were not selected for individual examination, we used as the assessment rate the cash deposit rate assigned to Mayao

Consistent with our established practice, for entries of subject merchandise during the POR produced and exported by Thai Union or Mayao for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR if there is no rate for the intermediate company(ies) involved in the transaction.

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.34 percent, the all-others rate made effective by the *Section 129 Determination.*[15] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation

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[12] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[13] As discussed above, we conducted this administrative review with respect to Marine Gold only for shrimp produced in Thailand where Marine Gold acted as either the producer or the exporter (but not both).

[14] We note that the Department's preliminary calculations for Mayao did not contain a complete set of printed assessment rate tables. Consequently, we updated the computer program which generated these calculations to print all of the rates. We based the assessment instructions for Mayao on the rates stated in the appropriate table.

[15] Effective January 16, 2009, there is no longer a cash deposit requirement for certain producers/exporters in accordance with the *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Thailand: Notice of Determination under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand,* 74 FR 5638 (January 30, 2009) (*Section 129 Determination*).

of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(h).

Dated: June 15, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–14808 Filed 6–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; West Coast Saltwater Fishing Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 22, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Leif Anderson, (206) 302–2403 or *Leif.Anderson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new collection of information.

The Northwest Fisheries Science Center and Southwest Fisheries Science Center are undertaking an economics research project to assess the behavior of saltwater recreational anglers in response to catch rates, bag limits, and the timing and length of the season, and how these actions affect the value of saltwater recreational fishing. The West Coast Saltwater Fishing Survey (WCSFS) will provide critical economic data related to saltwater recreational fishing on the Pacific West Coast. More specifically, the WCSFS will collect data needed to (1) assess the socioeconomic characteristics of recreational saltwater fishing participants; (2) assess the economic value of saltwater recreational fishing trips through statistical estimation of models; and (3) assess the change in these values associated with possible changes in management policies related to catch rates, bag limits, season timing and length, time and area closures, and changes in economic, ocean, or fishery conditions.

II. Method of Collection

A sample of fishing license holders will be screened with a brief telephone or email survey (screener), followed by an internet or mail survey, as appropriate.

III. Data

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Review: Regular submission (new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 8744.

Estimated Time per Response: 25 minutes for respondents who saltwater fish on the West Coast, 10 minutes for all other respondents, plus 5 minutes for those reached by the phone or email screener.

Estimated Total Annual Burden Hours: 531.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 17, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–14750 Filed 6–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluations of National Estuarine Research Reserves and Coastal Management Programs

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold public meetings to solicit comments for the performance evaluations of the Grand Bay and Jacques Cousteau National Estuarine Research Reserves and Alabama Coastal Area Management Program (Alabama Coastal Management Program).

DATES: *Jacques Cousteau National Estuarine Research Reserve Evaluation:* The public meeting will be held on Tuesday, August 16, 2016, and written comments must be received on or before Friday, August 19, 2016.

Grand Bay National Estuarine Research Reserve Evaluation: The public meeting will be held on Wednesday, August 24, 2016, and written comments must be received on or before Friday, September 2, 2016.

Alabama Coastal Management Program Evaluation: The public meeting will be held on Wednesday, August 10, 2016 and written comments must be received on or before Friday, August 19, 2016.

For specific dates, times, and locations of the public meetings, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit comments on the reserves and coastal program NOAA intends to evaluate by any of the following methods:

Public Meeting and Oral Comments: A public meeting will be held in Tuckerton, New Jersey for the Jacques Cousteau Reserve, Moss Point Mississippi for the Grand Bay Reserve, and Spanish Fort, Alabama for the Alabama Coastal Management Program. For specific locations, see **SUPPLEMENTARY INFORMATION.**

Written Comments: Please direct written comments to Carrie Hall, Evaluator, Policy, Planning and Communications, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or email comments *Carrie.Hall@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Carrie Hall, Evaluator, Policy, Planning and Communications, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov.* Copies of the program's most recent evaluation and performance report, as well as the evaluation notification letter to the state may be obtained upon request by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.** Copies of the most recent final evaluation findings may also be downloaded or viewed on the Internet at *http://coast.noaa.gov/czm/evaluations/evaluation_findings/index.html.*

SUPPLEMENTARY INFORMATION: Sections 312 and 315 of the Coastal Zone Management Act (CZMA) require NOAA to conduct periodic evaluations of federally approved coastal management programs and national estuarine research reserves. The process includes a public meeting, consideration of written public comments and consultations with interested Federal, state, and local agencies and members of the public. For the evaluation of National Estuarine Research Reserves, NOAA will consider the extent to which the state has met the national objectives, adhered to its management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the Coastal Zone Management Act. The evaluation of Coastal Management Programs require findings concerning the extent to which a state or territory has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the Coastal Zone Management Act. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Specific information on the periodic evaluation of reserves and coastal management programs that are the subject of this notice are detailed below as follows:

Grand Bay National Estuarine Research Reserve Evaluation

You may participate or submit oral comments at the public meeting scheduled as follows:

Date: August 24, 2016.

Time: 4:30 p.m., local time.

Location: 6005 Bayou Heron Road, Room 100, Moss Point, Mississippi 36592.

Written comments must be received on or before September 2, 2016.

Jacques Cousteau National Estuarine Research Reserve Evaluation

You may participate or submit oral comments at the public meeting scheduled as follows:

Date: August 16, 2016.

Time: 6:30 p.m., local time.

Location: Cousteau Center, 130 Great Bay Boulevard, Tuckerton, New Jersey, 08087.

Written comments must be received on or before August 19, 2016.

Alabama Coastal Management Program Evaluation

You may participate or submit oral comments at the public meeting scheduled as follows:

Date: August 10, 2016.

Time: 5:30 p.m., local time.

Location: Five Rivers Tensaw Theater, 30945 Five Rivers Boulevard, Spanish Fort, Alabama 36527.

Written comments must be received on or before August 19, 2016.

(Federal Domestic Assistance Catalog 11.419; Coastal Zone Management Program Administration)

Dated: June 2, 2015.

John King,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–14607 Filed 6–21–16; 8:45 am]

BILLING CODE 3510–08–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0102]

Collection of Information; Proposed Extension of Approval; Comment Request—Follow-Up Activities for Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. Chapter 35), the Consumer Product Safety Commission ("CPSC" or "Commission") requests comments on a proposed extension of approval of a collection of information from persons who have been involved in, or have witnessed incidents associated with, consumer products. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget ("OMB").

DATES: The Office of the Secretary must receive comments not later than August 22, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0102, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2009–0102, into the "Search" box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 5(a) of the Consumer Product Safety Act, 15 U.S.C. 2054(a), requires the Commission to collect information related to the causes and prevention of death, injury, and illness associated with consumer products. That section also requires the Commission to conduct continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products.

The Commission obtains information about product-related deaths, injuries, and illnesses from a variety of sources, including newspapers, death certificates, consumer complaints, and medical facilities. In addition, the Commission receives information through its Internet Web site through forms reporting on product-related injuries or incidents.

The Commission also operates a surveillance system known as the National Electronic Injury Surveillance System ("NEISS") that provides timely data on consumer product-related injuries treated as well as U.S. childhood poisonings. NEISS data comes from a statistically valid sample from approximately 100 hospital emergency departments. The NEISS system has been in operation since 1971. NEISS emergency department records are reviewed by hospital employees or contractors ("NEISS respondents").

From these sources, Commission staff selects cases of interest for further investigation by face-to-face or telephone interviews with persons who witnessed, or were injured in, incidents involving consumer products. The CPSC plans to begin conducting investigations through internet-based questionnaires in the next year to supplement telephone interviews. On-site investigations are usually made in cases where CPSC staff need photographs of the incident site, the product involved, or detailed information about the incident. This information can come from face-to-face interviews with persons who were injured or who witnessed the incident, as well as contact with state and local officials, including police, coroners, and fire investigators, and others with knowledge of the incident.

The Commission uses the information to support the development and improvement of voluntary standards; rulemaking proceedings; information and education campaigns; compliance and enforcement efforts and related administrative and judicial proceedings. Commission activities are, in many cases, data driven, and incident data is crucial in advancing the agency's mission. In addition, the CPSC also collects information through NEISS for other federal agencies through Interagency Agreements including the Centers for Disease Control and Prevention ("CDC") and the National Highway Traffic Safety Administration ("NHTSA").

OMB approved the collection of information concerning product-related injuries under control number 3041–0029. OMB's most recent extension of approval will expire on September 30, 2016. The Commission now proposes to request an extension of approval of this collection of information.

B. NEISS Estimated Burden

The NEISS system collects information on consumer-product related injuries from about 100 hospitals in the U.S. Respondents to NEISS include hospitals that directly report information to NEISS and hospitals that allow CPSC contractors to collect the data on behalf of the agency. In FY 2015, there were 137 NEISS respondents (total hospitals and CPSC contractors). The NEISS respondents reviewed an estimated 5.05 million emergency department records and reported 739,673 total cases.

Collecting emergency department records for review each day takes about 10 minutes. Each record takes about 30 seconds to review. Coding and reporting records that involve consumer products or other injuries takes about 2 minutes per record. Coding and reporting additional special study information takes about 90 seconds per record. Respondents also spend about 36 hours per year in related activities (training, evaluations, and communicating with other hospital staff).

The total burden hours for all NEISS respondents are estimated to be 81,210 for FY2015. The average burden hour per respondent is 593 hours. However, the total burden hour on each respondent varies due to differences in size of the hospital (*e.g.,* small rural hospitals versus large metropolitan hospitals). The smallest hospital reported 202 cases with a burden of about 111 hours, while the largest hospital reported 60,405 cases with a burden of about 4,222 hours.

The total costs to NEISS respondents for FY2015 are estimated to be $3,271,621 per year. NEISS respondents enter into contracts with CPSC and are compensated for these costs. The average cost per respondent is estimated to be about $23,880. The average cost per burden hour is estimated to be $40.29 per hour (including wages and overhead). However, the actual cost to each respondent varies due to the type of respondent (hospital versus CPSC contractor), size of hospital, and regional differences in wages and overhead. Therefore, the actual annual cost for any given respondent may vary between $1,199 at a small rural hospital and $281,953 at the largest metropolitan hospital.

C. Other Burden Hours

In cases that require more information regarding product-related incidents or injuries, the CPSC staff conducted face-to-face interviews of approximately 220 persons each year. On average, an on-site interview takes about 4.5 hours. The CPSC staff also conducts about 1760 in-depth investigations by telephone. Each in-depth telephone investigation requires about 20 minutes. In addition, the staff is planning to conduct about 200 internet-based questionnaires per year that require about 20 minutes each. The CPSC staff estimates 1,643 annual burden hours on these respondents: 989 hours for face-to-face interviews; 587 hours for in-depth telephone interviews, and 67 hours for internet-based questionnaires. The burden required for reporting is estimated at $32.82 an hour (U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation," March 2016, Table 9, Total compensation for all sales and office workers in goods-producing industries: *http://www.bls.gov/ncs*). At this valuation, the estimated annual cost to the public is about $53,923.

This request for the approval of an estimated 82,853 (81,210 NEISS and 1,643 other) burden hours per year is an increase of 37,845 hours since this collection of information was last approved by OMB in 2013. The increase in the burden hours is largely due to the inclusion of information collected through NEISS for other federal agencies through Interagency Agreements including CDC and NHTSA, which were not otherwise accounted for by those agencies. In order to account for all the burden hours associated with the NEISS information collection, we have added those hours to the collection of information. The increase in burden hours also includes the increase associated with offering internet-based questionnaires in addition to in-person and telephone interviews.

This information collection request excludes the burden associated with other publicly available Consumer Product Safety Information Databases, such as internet complaints, Hotline, and Medical Examiners and Coroners Alert Project ("MECAP") reports, which are approved under OMB control number 3041–0146. This information collection request also excludes the burden associated with follow-up investigations conducted by other federal agencies.

The annual cost to the government of the collection of the NEISS information is estimated to be about $4.9 million a year. This estimate includes $3.3 million in compensation to NEISS respondents described in section 12(a) above. This estimate also includes $1.603 million for about 150 CPSC professional staff months each year. The estimate of professional staff months includes the time required to: Oversee NEISS operations (*e.g.*, administration, training, quality control); prepare questionnaires, interviewer guidelines, and other instruments and instructions used to collect the information; conduct face-to-face and telephone interviews; and evaluate responses obtained from interviews and completed forms. Each month of professional staff time costs the Commission about $10,683.83. This is based on a GS–12 mid-level salaried employee. The average yearly wage rate for a mid-level salaried GS–12 employee in the Washington, DC metropolitan area (effective as of January 2016) is $87,821 (GS–12, step 5). This represents 68.5 percent of total compensation (U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation," March 2016, Table 1, percentage of wages and salaries for all civilian management, professional, and related employees: *http://www.bls.gov/ncs/*). Adding an additional 31.5 percent for benefits brings average yearly compensation for a mid-level salaried GS–12 employee to $128,206.

D. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: June 17, 2016.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2016–14729 Filed 6–21–16; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the United States Naval Academy Board of Visitors ("the Board").

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(a). The charter and contact information for the Board's Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/*.

The Board provides independent advice and recommendations to the President of the United States on the state of morale and discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider. The Board shall be constituted annually and composed of 15 members: (a) The Chair of the Senate Committee on Armed Services, or designee; (b) Three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Senate Committee on Appropriations; (c) The Chair of the House Committee on Armed Services, or designee; (d) Four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the House Committee on Appropriations; and (e) Six persons designated by the President. Board members who are full-time or permanent part-time Federal officers or employees shall be appointed as regular government employee members pursuant to 41 CFR 102–3.130(a). Board members who are not full-time or permanent part-time Federal officers or employees shall be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. The Department of Defense, as necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Board and must report all recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Board's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Board/subcommittee meeting. The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Board. All written statements must be submitted to the Board's DFO who will ensure the written statements are provided to the membership for their consideration.

Dated: June 17, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–14733 Filed 6–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Access to Healthcare Under the TRICARE Program for Beneficiaries of TRICARE Prime

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of access to health care standards for TRICARE Prime beneficiaries under the TRICARE Program.

SUMMARY: This notice is to advise interested parties of the Military Health System's access to health care standards addressed in Title 32, Code of Federal Regulations (32 CFR), Section 199.17 for TRICARE Prime beneficiaries under the TRICARE Program and how the Secretary of Defense plans to ensure that beneficiaries under TRICARE Prime who are seeking an appointment for health care will obtain an appointment within established access to health care standards. Access to health care under the TRICARE Program for TRICARE Prime beneficiaries was established in October 1995 and remains current.

ADDRESSES: Defense Health Agency, TRICARE Health Plan, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042–5101.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Graves, TRICARE Health Plan, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

A. Background on Access to Health Care for TRICARE Prime Beneficiaries Under the TRICARE Program

Section 704 of the National Defense Authorization Act for Fiscal Year 2016 (NDAA for FY16) requires the Secretary of Defense to establish and publicize access to care standards for beneficiaries enrolled in TRICARE Prime at military treatment facilities (MTFs) or with civilian network providers. The Department has already established Prime maximum wait times and travel distances for Prime primary and specialty care appointments as required by Section 704 of the NDAA for FY 2016.

Access to care standards for TRICARE Prime enrollees have been in place since the start of the TRICARE Prime program in 1995. TRICARE Prime access standards were published in a **Federal Register** notice on October 5, 1995 (60 FR 52100–52101) and promulgated in 32 CFR 199.17(p)(5)(i–v). These same standards are also disseminated throughout the Military Health System via Assistant Secretary of Defense (Health Affairs) Memorandum 11–005, "TRICARE Policy for Access to Care," dated February 23, 2011. Finally, these standards are incorporated by reference in existing and future TRICARE regional support contracts. TRICARE Prime access to health care standards apply regardless of the location of the beneficiary's primary care manager (military treatment facility or civilian network).

B. Description of the Health Care Access Standards for TRICARE Prime Beneficiaries

The health care access standards outlined in this notice are set forth in 32 CFR 199.17(p)(5)(i–v). These access standards remain current and in force without any amendment to date.

Access standards. Preferred provider networks will have attributes of size, composition, mix of providers, and geographical distribution so that the networks, coupled with the MTF capabilities, can adequately address the health care needs of the enrollees. The capabilities of the MTF plus preferred provider network will meet the following access standards with respect to the needs of the expected number of enrollees:

(i) Under normal circumstances, enrollee travel time may not exceed 30 minutes from home to primary care delivery site unless a longer time is necessary because of the absence of providers (including providers not part of the network) in the area.

(ii) The wait time for an appointment for a well-patient visit or a specialty care referral shall not exceed four weeks; for a routine visit, the wait time for an appointment shall not exceed one week; and for an urgent care visit the wait time for an appointment shall be within 24 hours. (The specialty care time standard does not apply in the case of a follow-up appointment that for clinical reasons is specifically stated for a later period.)

(iii) Emergency services shall be available and accessible to handle emergencies (and urgent care visits if not available from other primary care providers pursuant to paragraph (p)(5)(ii) of 32 CFR 199.17), within the service area 24 hours a day, seven days a week.

(iv) The network shall include a sufficient number and mix of board certified specialists to meet reasonably the anticipated needs of enrollees. Travel time for specialty care shall not exceed one hour under normal circumstances, unless a longer time is necessary because of the absence of providers (including providers not part of the network) in the area. This requirement does not apply under the Specialized Treatment Services Program.

(v) Office waiting times in non-emergency circumstances shall not exceed 30 minutes, except when emergency care is being provided to patients, and the normal schedule is disrupted.

C. Description of How the Secretary of Defense Plans To Ensure That Beneficiaries Under TRICARE Prime Who Are Seeking an Appointment for Health Care Will Obtain an Appointment Within Established Access to Health Care Standards

In an effort to ensure TRICARE Prime beneficiaries obtain an appointment within access to health care standards at an MTF, the Military Health System implemented a first-call resolution policy in calendar year 2015. This policy outlines standard processes to ensure TRICARE Prime beneficiaries are not asked to call back to the MTFs if no appointments are available within the established access to health care standards. The policy also identifies responsibilities of MTF Directors, primary care, specialist care and other stakeholders identified in the appointing process to ensure patient satisfaction for our beneficiaries. The policy outlines specific procedures to correctly transfer calls in accordance with existing access to care standards, referral management protocols and proper use of managing clinic schedules to ensure appointing success the first time one of our beneficiaries seeks access. In addition, a Joint Outpatient Experience Survey will be used to measure the impact of the first-call resolution policy from beneficiaries' perspectives on whether they obtained an appointment within health care access standards.

For those TRICARE Prime beneficiaries seeking an appointment with a TRICARE Prime civilian network provider, if the beneficiary cannot be scheduled for a visit in the MTF or TRICARE Prime network within the access to care standards, the beneficiary will be authorized an out-of-network provider visit with no point-of-service charge. The TRICARE Reimbursement Manual will be revised to reflect the above statement. In addition, as stated in the TRICARE Operations Manual (TOM Chapter 1, Section 3, Paragraph 1.0), "Contractors are charged with providing or arranging for delivery of quality, timely health care services and have the responsibility for providing the timely and accurate processing of all claims received into their custody, whether for network or non-network care."

D. Communications

The Defense Health Agency will post the TRICARE Prime access to care standards on the TRICARE.mil Web site and execute a strategic communication plan to educate beneficiaries enrolled in TRICARE Prime about the access to care standards.

Dated: June 17, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–14786 Filed 6–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Public Notice of Intent for Studies and Initial Scoping Meeting for Gulf Intracoastal Waterway Brazos River Floodgates and Colorado River Locks Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent and public scoping meeting.

SUMMARY: This notice provides a summary of the ongoing feasibility study activities for the Gulf Intracoastal Waterway (GIWW) Brazos River Floodgates (BRFG) and Colorado River Locks (CRL) Feasibility Study and solicit public input regarding the study. The objective of the feasibility study is to investigate and recommend solutions to improve traffic safety and navigation efficiencies at the confluence of the GIWW with the BRFG and CRL. The GIWW BRFG/CRL Feasibility Study will identify and evaluate possible structural and navigation alternatives to reduce traffic accidents and navigation delays. The non-Federal sponsor for the project is the Texas Department of Transportation (TXDOT).

DATES: The Galveston District will hold the Initial Public Scoping Meeting for the Feasibility Phase of the study on July 12, 2016 from 6:00–8:00 p.m.

ADDRESSES: The meeting will be held at the West Columbia Civic Center, 516 E. Brazos Ave. (State Highway 35), West Columbia, TX 77486.

FOR FURTHER INFORMATION CONTACT: Franchelle Craft, (409) 766–3187.

SUPPLEMENTARY INFORMATION:

Study Background. In 2000, the Galveston District completed a reconnaissance study to assess the feasibility of modifying the configurations of the BRFG and CRL to reduce traffic accidents and delays. The study resulted in the determination that there was Federal interest in continuing to the feasibility phase of the study. Funding for the feasibility phase of the study was approved in Fiscal Year 2016. Recognizing the hydrologic connectivity of the GIWW system, the decision was made to conduct the assessment of the BRFG and CRL separately and combine the results into one integrated feasibility report.

Navigation along the GIWW is constrained at the confluence with the BRFG and the CRL resulting in the following conditions:

- Inadequate channel and crossing widths for modern vessels;
- Outdated floodgate construction and width in the floodgate chambers at the Brazos River;
- Outdated lock construction at the Colorado River leading to mechanical failure;
- Shutdown of operations during high water periods presenting a significant security concern;
- Increased hydrology (river flows due to flood events) impacting navigation traffic;
- Increased operations and maintenance costs to prevent marine buildup on mechanical elements of the structures;
- Increased sedimentation at the mouth of the rivers;
- Shoreline erosion.

The Feasibility Study will assess the conditions identified above and develop specific measures/alternatives that can be combined or used as standalone actions to address the problems at each location.

Study Process. During the feasibility phase, detailed engineering, hydrology, economic analysis, and environmental studies are performed. The goal of the feasibility phase is to find the most cost-effective solution that responds to the problems identified above while protecting the Nation's environment. The final feasibility report documents the study results and findings, the selection process of the recommended alternative, and the costs and benefits of the recommended plan. The feasibility study ends when the report is submitted to Congress for authorization.

Study Status. The Feasibility study will reevaluate the proposed alternatives identified in the 2000 Reconnaissance Study to determine the feasibility of undertaking modifications to the Brazos and Colorado river crossings, as well as identify changes to the floodgate and lock structures at each location that are economically and environmentally justified. There is a need to reduce navigation impacts and costly waterborne traffic delays that are a result of aging infrastructure and inadequate channel dimensions for modern vessels. Alternatives to be evaluated in the feasibility phase include:

- Moving the gates away from the river;
- Widening the gates;
- Reconfiguring the guide wall to lessen the angle to the GIWW;
- Straightening the crossing at the Brazos and Colorado Rivers;
- Lock modifications (construction of new locks);
- Removal of floodgates; and/or;
- Some combination of these and other measures.

Meeting. The Galveston District will hold the Initial Public Scoping Meeting for the Feasibility Phase on July 12, 2016 from 6:00–8:00 p.m. at the West Columbia Civic Center. The purpose of the meeting will be to inform the community about the proposed navigation modification project, present how the study will be conducted, solicit public input regarding the initial scope of potential issues/alternatives to be addressed, and identify those issues/alternatives that should be analyzed further, or eliminated, based on their significance and effects on the environment. The information from the public meeting will be used in the development of an Environmental Impact Statement in compliance with the National Environmental Policy Act (NEPA) requirements. This notice serves as an invitation for the public to attend. The public will be provided an opportunity for questions and comments.

We are soliciting comments/concerns on the opportunities to improve navigation along the GIWW at the Brazos and Colorado Rivers, the identification of resources that may occur within the study area, and other social, economic, and environmental concerns.

All interested parties are invited to provide input to this study. Please send your comments or questions regarding this notice or mailing list updates to USACE SWG, 2000 Ft. Point Rd., Galveston, TX 77550. Written input can also be submitted and is requested by August 11, 2016. If we can provide further information, contact the project manager, Ms. Franchelle Craft, by phone at (409) 766–3187 or by email at *franchelle.e.craft@usace.army.mil.*

Eric W. Verwers,

Director, Regional Planning and Environmental Center.

[FR Doc. 2016–14694 Filed 6–21–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Withdrawal of Notice of Intent for the Environmental Impact Statement Process for the Compass Minerals—Ogden's Solar Evaporation Pond Expansion Project Within the Great Salt Lake, Box Elder County, UT

AGENCY: Department of the Army; Corps of Engineers, DoD.

ACTION: Notice of Intent; withdrawal.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), on November 1, 2007 the U.S. Army Corps of Engineers (Corps), Sacramento District, initiated the Environmental Impact Statement (EIS) process to evaluate the effects of the proposed expansion of solar evaporation ponds in the Great Salt Lake, Box Elder County, Utah and to assist the Corps in deciding whether to approve Great Salt Lake Mineral Corporation's application under Section 404 of the Clean Water Act. On December 23, 2015, the applicant for the proposed project withdrew their application for a Department of the Army Permit. Therefore, the Corps is terminating the EIS process, and is issuing this Notice of Intent to withdraw the November 1, 2007 Notice of Intent to Prepare an EIS.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and this Notice of Intent can be answered by Mr. Jason Gipson at 801–295–8380 x14, or email at *Jason.A.Gipson@usace.army.mil.* Please refer to identification number SPK–2007–00121.

SUPPLEMENTARY INFORMATION: Great Salt Lake Minerals Corporation, now Compass Minerals-Ogden (CMO) applied for Corps authorization under Section 404 of the Clean Water Act in 2007. The project as proposed would have resulted in the discharge of dredged and/or fill material into 107.3 acres of the Great Salt Lake to expand solar pond evaporation areas adjacent to existing ponds on the west side of the Great Salt Lake by constructing 54,000 acres of additional ponds. Due to potentially significant environmental effects associated with the proposed action, on November 1, 2007, the Corps issued a Notice of Intent to Prepare and EIS (72 FR 61871). Since publishing the Notice of Intent, the applicant has redesigned the project such that no waters of the U.S. would be impacted by the project and have withdrawn their permit application. As such, the Corps is terminating the EIS process, in accordance with Corps regulations at 33 CFR part 230, Appendix C(2) and 33 CFR part 325, Appendix (8)(g).

Dated: April 6, 2016.

Jeffrey S. Palazini,

LTC, EN, Deputy District Commander.

[FR Doc. 2016–14688 Filed 6–21–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0073]

Agency Information Collection Activities; Comment Request; FFEL/Direct Loan/Perkins Military Service Deferment/Post-Active Duty Student Deferment Request

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 22, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0073. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: FFEL/Direct Loan/Perkins Military Service Deferment/Post-Active Duty Student Deferment Request.

OMB Control Number: 1845–0080.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 16,000.

Total Estimated Number of Annual Burden Hours: 8,000.

Abstract: The Military Service/Post-Active Duty Student Deferment request form serves as the means by which a Federal Family Education Loan (FFEL), Perkins, or Direct Loan borrower requests a military service deferment and/or post-active duty student deferment and provides his or her loan holder with the information needed to determine whether the borrower meets the applicable deferment eligibility requirements. The form also serves as the means by which the U.S. Department of Education identifies Direct Loan borrowers who qualify for the Direct Loan Program's no accrual of interest benefit for active duty service members.

Dated: June 17, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–14732 Filed 6–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0072]

Agency Information Collection Activities; Comment Request; Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 22, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0072. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carmen Gordon, 202–453–7311.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report.

OMB Control Number: 1840–0640.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 158.

Total Estimated Number of Annual Burden Hours: 1,817.

Abstract: Ronald E. McNair Postbaccalaureate Achievement (McNair) Program grantees must submit the Annual Performance Report (APR) annually. The reports are used to evaluate grantees' performance for substantial progress, respond to GPRA requirements, and award prior experience points at the end of each project (budget) period. The Department also aggregates the data to provide descriptive information on the projects and to analyze the impact of the McNair Program on the academic progress of participating students.

Dated: June 17, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–14731 Filed 6–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

List of Correspondence From October 1, 2014, Through December 31, 2014

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary is publishing the following list of correspondence from the U.S. Department of Education (Department) received by individuals during the fourth quarter of 2014. The correspondence describes the Department's interpretations of the Individuals with Disabilities Education Act (IDEA) or the regulations that implement the IDEA. This list and the letters or other documents described in this list, with personally identifiable information redacted, as appropriate, can be found at: *http://www2.ed.gov/policy/speced/guid/idea/index.html.*

FOR FURTHER INFORMATION CONTACT: Jessica Spataro or Mary Louise Dirrigl. Telephone: (202) 245–7605.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this list and the letters or other documents described in this list in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) by contacting Jessica Spataro or Mary Louise Dirrigl at (202) 245–7605.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from October 1, 2014, through December 31, 2014. Under section 607(f) of the IDEA, the Secretary is required to publish this list quarterly in the **Federal Register**. The list includes those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law. The list identifies the date and topic of each letter and provides summary information, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 602—Definitions

Topic Addressed: Child With a Disability

○ Letter dated November 12, 2014, to Maryland attorney Michelle Kotler, regarding criteria used by some States to identify children with "visual impairment or blindness," a term defined in Part B of the IDEA.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

○ Dear Colleague Letter dated November 12, 2014, and accompanying Frequently Asked Questions document, issued jointly by the Department's

Office for Civil Rights and Office of Special Education and Rehabilitative Services, and the U.S. Department of Justice's Civil Rights Division, explaining the interplay between requirements in Part B of the IDEA governing the provision of a free appropriate public education and the requirements in Title II of the Americans with Disabilities Act governing effective communication with students with hearing, vision, or speech disabilities in public elementary and secondary schools.

○ Dear Colleague Letter dated December 5, 2014, regarding the requirements in Part B of the IDEA that apply to the education of students with disabilities in correctional facilities.

Topic Addressed: Methods of Ensuring Services

○ Letter dated February 10, 2014,[1] to Connecticut Department of Social Services official Jennifer Pardus, regarding the requirements in Part B of the IDEA that public agencies must follow prior to accessing a child's or parent's public benefits or insurance for the first time.

Topic Addressed: State Educational Agency General Supervisory Authority

○ Letter dated November 3, 2014, to Maine Disability Rights Center staff attorney Atlee Reilly, clarifying that there is no requirement to assign burden of proof under the State complaint procedures in Part B of the IDEA.

Topic Addressed: Maintenance of State Financial Support

○ Letter dated December 17, 2014, to Illinois State Board of Education State Superintendent of Education Christopher Koch, regarding the requirements in Part B of the IDEA relating to maintenance of State financial support for special education and related services.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Reevaluations

○ Letter dated November 12, 2014, to educator Tracy Blodgett, regarding whether a child whose hearing loss was medically or surgically corrected could still meet the eligibility criteria as a "child with a disability" under Part B of the IDEA.

Other Letters That Do Not Interpret Idea but May Be of Interest to Readers

○ Dear Colleague Letter dated November 12, 2014, issued jointly by the Department's Office for Civil Rights and the U.S. Department of Justice Civil Rights Division, regarding the application of Federal civil rights requirements to the education of students in juvenile justice residential facilities.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 16, 2016.

Sue Swenson,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2016–14720 Filed 6–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0045]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Direct Loan, FFEL, Perkins and TEACH Grant Total and Permanent Disability Discharge Application and Related Forms

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 22, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0045. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jon Utz, 202–377–4040.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Direct Loan, FFEL, Perkins and TEACH Grant Total and Permanent Disability Discharge Application and Related Forms.

OMB Control Number: 1845–0065.

Type of Review: A revision of an existing information collection.

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[1] This February 10, 2014, letter was inadvertently omitted from the first quarter List of Correspondence covering January 1, 2014, through March 31, 2014.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 254,800.

Total Estimated Number of Annual Burden Hours: 127,400.

Abstract: The Discharge Application: Total and Permanent Disability serves as the means by which an individual who is totally and permanently disabled, as defined in section 437(a) of the Higher Education Act of 1965, as amended, applies for discharge of his or her Direct Loan, FFEL, or Perkins loan program loans, or TEACH Grant service obligation. The form collects the information that is needed by the U.S. Department of Education (the Department) to determine the individual's eligibility for discharge based on total and permanent disability. The Total and Permanent Disability Discharge: Post-Discharge Monitoring form serves as the means by which an individual who has received a total and permanent disability discharge provides the Department with information about his or her annual earnings from employment during the 3-year post-discharge monitoring period that begins on the date of discharge. The Total and Permanent Disability Discharge: Applicant Representative Designation form serves as the means by which an applicant for a total and permanent disability discharge may (1) designate a representative to act on his or her behalf in connection with the applicant's discharge request, (2) change a previously designated representative, or (3) revoke a previous designation of a representative.

Dated: June 17, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–14826 Filed 6–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Production of Tritium in Commercial Light Water Reactors

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Record of Decision.

SUMMARY: The National Nuclear Security Administration (NNSA), a separately organized agency within the Department of Energy (DOE), is issuing this Record of Decision (ROD) for the *Final Supplemental Environmental Impact Statement for the Production of Tritium in a Commercial Light Water Reactor* (CLWR SEIS) (DOE/EIS–0288–S1) issued on March 4, 2016.

NNSA prepared the CLWR SEIS to update the environmental analyses in the 1999 Final Environmental Impact Statement for the Production of Tritium in a Commercial Light Water Reactor (DOE/EIS–0288; the 1999 EIS). The CLWR SEIS provides analysis of the potential environmental impacts from Tritium Producing Burnable Absorber Rod (TPBAR) irradiation based on a conservative estimate of the tritium permeation rate through the TPBAR cladding, NNSA's revised estimate of the maximum number of TPBARs necessary to support the current and projected future tritium supply requirements, and a maximum production scenario of irradiating no more than a total of 5,000 TPBARs every 18 months.

NNSA has decided to implement the Preferred Alternative, Alternative 6, which allows for the irradiation of up to a total of 5,000 TPBARs every 18 months using Tennessee Valley Authority (TVA) reactors at both the Watts Bar and Sequoyah sites. Although near-term tritium requirements could likely be met with the irradiation of 2,500 TPBARs every 18 months, this decision provides the greatest flexibility to meet potential future needs that could arise from various plausible but unexpected events. The exact number of TPBARs to be irradiated during each/any 18-month reactor core cycle will be determined by both national security requirements and TVA reactor availability.

The CLWR SEIS analyses indicate that there would not be any significant increase in radiation exposure associated with TPBAR irradiation for facility workers or the public. For all analyzed alternatives, estimated radiation exposures would remain well below regulatory limits. The calculated estimated exposures for normal reactor operations with even the maximum number of TPBARs are comparable to those for normal reactor operation without TPBARs.

FOR FURTHER INFORMATION CONTACT: For further information on the CLWR SEIS, or this ROD, or to receive a copy of the CLWR SEIS, contact: Mr. Curtis Chambellan, CLWR SEIS Document Manager, P.O. Box 5400, Albuquerque, New Mexico 87185–5400; 505–845–5073; *tritium.readiness.seis@NNSA.DOE.GOV.*

For information on the DOE National Environmental Policy Act (NEPA) process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586–4600, or leave a message at (800) 472–2756. This ROD, the CLWR SEIS, and related NEPA documents are available on the DOE NEPA Web site at *www.energy.gov/nepa* and on NNSA's NEPA Web site at *http://nnsa.energy.gov/aboutus/ouroperations/generalcounsel/nepaoverview/nepa/tritiumseis.*

SUPPLEMENTARY INFORMATION:

Background

NNSA is the lead Federal agency responsible for maintaining and enhancing the safety, security, reliability, and performance of the United States (U.S.) nuclear weapons stockpile. Tritium, a radioactive isotope of hydrogen, is an essential component of every weapon in the U.S. nuclear weapons stockpile and must be replenished periodically due to its short half-life.

In March 1999, DOE published the 1999 EIS, which addressed the production of tritium in the TVA's Watts Bar and Sequoyah nuclear reactors using TPBARs. The 1999 EIS assessed the potential environmental impacts of irradiating up to 3,400 TPBARs per reactor per fuel cycle (a fuel cycle lasts about 18 months). On May 14, 1999, DOE published the ROD for the 1999 EIS (64 FR 26369) in which it announced its decision to enter into an agreement with TVA to produce tritium in the Watts Bar Unit 1 reactor (Watts Bar 1) in Rhea County, Tennessee, near Spring City; and Sequoyah Units 1 and 2 reactors (Sequoyah 1 and 2) in Hamilton County, Tennessee, near Soddy-Daisy. In 2002, TVA received license amendments from the U.S. Nuclear Regulatory Commission (NRC) to produce tritium in those reactors. Since 2003, TVA has been producing tritium for NNSA by irradiating TPBARs only in Watts Bar 1. After irradiation, NNSA transports the TPBARs to the Tritium Extraction Facility at the DOE Savannah River Site in South Carolina. NNSA's Interagency Agreement with TVA to irradiate TPBARs is in effect until November 30, 2035.

During irradiation of TPBARs in a reactor, a small amount of tritium diffuses through the TPBAR cladding into the reactor coolant; this is called permeation. The 1999 EIS estimated that the permeation rate of tritium through the TPBAR cladding into the reactor coolant system would be less than or equal to 1 curie per TPBAR per year. Based on tritium production experience at Watts Bar 1, NNSA has determined that tritium permeation through the cladding is about three to four times higher than this estimate; nevertheless, tritium releases to the environment have resulted in radiation exposures that are well below regulatory limits. To put this permeation rate into perspective, it represents less than 0.1 percent of the total tritium each TPBAR produces during irradiation. NNSA has prepared the CLWR SEIS to update the information provided in the 1999 EIS to include: (1) The analysis of the potential environmental impacts from TPBAR irradiation based on a conservative estimate of the tritium permeation rate, (2) NNSA's revised estimate of the maximum number of TPBARs necessary to support the current and projected future tritium supply requirements, and (3) a maximum production scenario of irradiating 5,000 TPBARs every 18 months, which NNSA might require as a contingency capability.

Purpose and Need for Agency Action

U.S. strategic nuclear systems are based on designs that use tritium gas. Because tritium decays at a rate of about 5.5 percent per year (*i.e.,* every 12.3 years one-half of the tritium has decayed), periodic replacement is required as long as the U. S. relies on a nuclear deterrent. The nation, therefore, requires a reliable source of tritium to maintain its nuclear weapons stockpile. Since completion of the 1999 EIS, the projected need for tritium has decreased. Near-term tritium requirements are more likely to be met with the irradiation of 2,500 TPBARs, but this does not exclude the possibility that various potential future events could necessitate increasing TPBAR irradiation, including but not limited to changes in the NNSA's requirements for tritium, or to compensate for a prolonged reactor outage. In any event, the exact number of TPBARs to be irradiated will be determined by both national security requirements and TVA reactor availability, with no more than a total of 5,000 TPBARs (no more than 2,500 TPBARs per reactor) irradiated during an 18-month cycle, an amount that does not exceed the scope of the CLWR SEIS analysis, or the 1999 EIS.

Because NNSA continues to need tritium for nuclear weapons, NNSA's purpose and need for the production of tritium in CLWRs remains the same today as described in the 1999 EIS. However, current tritium requirements are less than they were in 1999. The observed higher-than-expected tritium permeation rate has resulted in precautionary limitations on the number of TPBARs that the NRC has permitted TVA to irradiate in its reactors.[1] As a result, TVA cannot currently irradiate enough TPBARs in its reactors to meet NNSA's projected future tritium production requirements. The CLWR SEIS supplements applicable environmental analyses in the 1999 EIS to analyze and evaluate the potential effects of the higher tritium permeation to inform decisions related to producing tritium quantities needed to meet national security requirements.

Alternatives Considered

To supply tritium to meet stockpile requirements, NNSA could potentially use one or more of four TVA CLWR units at the Watts Bar and Sequoyah sites (two at each site). These include the units evaluated in the 1999 EIS as well as Watts Bar Unit 2 (Watts Bar 2) which is currently coming online. The SEIS evaluates the potential environmental impacts from TPBAR irradiation for seven alternatives:

The No-Action Alternative is based on the analysis in the 1999 EIS, the Record of Decision for the 1999 EIS, and analyses for NRC license applications and license amendment actions. The 1999 EIS estimated a maximum of 3,400 curies of tritium released from any reactor in a given year. To stay within this maximum 3,400 curies, the SEIS No Action Alternative assumes a conservative release of 5 curies for each TPBAR annually, or a total of 680 TPBARs in any given reactor. This means that the No-Action Alternative assumes irradiation of up to a total of 2,040 TPBARs every 18 months using the reactors identified in the 1999 ROD (Watts Bar 1, Sequoyah 1, and Sequoyah 2) to keep permeation levels under currently approved NRC license and regulatory limits.

Alternative 1 assumes TVA would irradiate up to a total of 2,500 TPBARs every 18 months at the Watts Bar site and would not irradiate TPBARs for tritium production at the Sequoyah site.

Alternative 2 assumes TVA would irradiate up to a total of 2,500 TPBARs every 18 months at the Sequoyah site and would not irradiate TPBARs for tritium production at the Watts Bar site.

Alternative 3 assumes TVA would irradiate up to a total of 2,500 TPBARs every 18 months using both the Watts Bar and Sequoyah sites. This would provide NNSA and TVA the ability to supply requirements using either site independently or to use both sites, with each supplying a portion of the necessary tritium.

Alternative 4 assumes TVA would irradiate up to a total of 5,000 TPBARs every 18 months at the Watts Bar site using Watts Bar 1 and 2. Because TVA would irradiate a maximum of 2,500 TPBARs in any one reactor, this would involve use of both Watts Bar reactors. Under this alternative, TVA would not irradiate TPBARs for tritium production at the Sequoyah site.

Alternative 5 assumes TVA would irradiate up to a total of 5,000 TPBARs every 18 months at the Sequoyah site using Sequoyah 1 and 2. Because TVA would irradiate a maximum of 2,500 TPBARs in any one reactor, this would involve use of both Sequoyah reactors. Under this alternative, TVA would not irradiate TPBARs for tritium production at the Watts Bar site.

Alternative 6 assumes TVA would irradiate up to a total of 5,000 TPBARs every 18 months using both the Watts Bar and Sequoyah sites. Because TVA would irradiate a maximum of 2,500 TPBARs in any one reactor, this could involve the use of one or both reactors at each of the sites.

The following table summarizes these alternatives and provides information about the number of TPBARs analyzed per site as well as the maximum number of TPBARs that could be irradiated every 18 months for each alternative. The maximum number of TPBARs analyzed in the CLWR SEIS for irradiation in a single reactor (as opposed to a single site) is 2,500 TPBARs per fuel cycle versus the 3,400 TPBARs analyzed in the 1999 EIS.

TRITIUM PRODUCTION ALTERNATIVES

Site	Alternatives									
	No-Action		1	2	3		4	5	6	
	Watts bar	Sequoyah	Watts bar	Sequoyah	Watts bar	Sequoyah	Watts bar	Sequoyah	Watts bar	Sequoyah
Reactor Units	1	1 and 2	1 and/or 2	1 and/or 2	1 and/or 2	1 and/or 2	1 and 2	1 and 2	1 and/or 2	1 and/or 2

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[1] Because of the higher-than-previously-expected rate of permeation, TVA requested, and the NRC approved, a reduction in the number of TPBARs TVA can irradiate per fuel cycle.

TRITIUM PRODUCTION ALTERNATIVES—Continued

Site	Alternatives									
	No-Action		1	2	3		4	5	6	
	Watts bar	Sequoyah	Watts bar	Sequoyah	Watts bar	Sequoyah	Watts bar	Sequoyah	Watts bar	Sequoyah
Number of TPBARs analyzed per site	680	1,360	2,500	2,500	1,250	1,250	5,000	5,000	2,500	2,500
Maximum TPBARs irradiated every 18 months for alternative.	2,040		2,500	2,500	2,500		5,000	5,000	5,000	

In the Notice of Intent to prepare the CLWR SEIS (76 FR 60017; September 28, 2011), NNSA stated that it would assess the impacts associated with tritium production in CLWRs based on a permeation rate of about 5 curies of tritium per TPBAR per year. Although the observed tritium permeation through the cladding has been less than 5 curies of tritium per TPBAR per year, the current permeation rate does not take into account potential uncertainties about operating cycle length, tritium production per TPBAR, and future operational changes that could occur at the TVA reactors, all of which could affect the permeation rate.

Given these potential uncertainties in operational parameters, and after consultation with TVA and the Pacific Northwest National Laboratory (the TPBAR design agency), NNSA decided to evaluate an even higher and thus more conservative tritium permeation rate (10 curies of tritium per TPBAR per year) in the CLWR SEIS instead of 5 curies of tritium per TPBAR per year. NNSA, the Pacific Northwest National Laboratory, and TVA have determined that a tritium permeation rate of 10 curies of tritium per TPBAR per year is the best estimate to ensure that the analyses would reasonably be expected to bound uncertainties in relation to future operations. By analyzing this higher tritium permeation rate, NNSA is confident that the SEIS provides a reasonable, but conservative and bounding, analysis of the potential environmental impacts from tritium production in the Watts Bar and Sequoyah reactors. In addition, the SEIS includes a standalone analysis of the potential impacts associated with a permeation rate of 5 curies of tritium per TPBAR per year for 2,500 TPBARs per 18-month cycle at Watts Bar 1 to provide the most realistic estimate of the potential impacts.

Preferred Alternative

The Preferred Alternative is the alternative the agency believes would ensure its ability to fulfill its statutory mission, giving consideration to environmental, economic, technical, and other factors. In the Draft CLWR SEIS, NNSA identified Alternative 1 as the Preferred Alternative. While, as previously stated, the irradiation of 2,500 TPBARs every 18 months is likely to meet near-term national security requirements, NNSA has determined that responsible planning needs to incorporate the flexibility to address potential future scenarios, including but not limited to a change in tritium production requirements or a prolonged reactor outage. Such events could require NNSA to increase the number of TPBARs that must be irradiated in a given 18-month period. To enable that flexibility, NNSA designated Alternative 6 as the Preferred Alternative in the Final SEIS, because that alternative encompasses the full numerical range of TPBARs that could, under any currently foreseeable circumstances, be irradiated in an 18-month period, at either or both the Watts Bar and Sequoyah sites, to satisfy national security requirements.

Environmentally Preferable Alternative

After considering the potential impacts to each resource area by alternative, NNSA identified the No-Action Alternative as the environmentally preferable alternative. Under the No-Action Alternative, as many as 680 TPBARs would be irradiated every 18 months in each of the following reactors: Watts Bar 1, Sequoyah 1 and Sequoyah 2. If all three reactors were used for tritium production, a maximum of 2,040 TPBARs could be irradiated every 18 months. This is the lowest limiting value considered for the total number of TPBARs proposed to be irradiated under any of the alternatives and consequently would result in less potential environmental impact.

Environmental Impacts of Alternatives

The CLWR SEIS analyzed the potential impacts of each alternative on land use, aesthetics, climate and air quality, geology and soils, water resources, biological resources, cultural resources, infrastructure and utilities, socioeconomics, and human health and safety. The CLWR SEIS also analyzed the potential environmental impacts of each alternative that may result from accidents and intentional destructive acts, transportation, and those associated with waste and spent nuclear fuel management, and environmental justice. The key SEIS findings are: (1) Tritium releases from normal operations with TPBAR irradiation would have an insignificant impact on the health of workers and the public; (2) tritium releases from TPBAR irradiation would increase tritium concentrations in the Tennessee River in comparison with not irradiating TPBARs; however, the tritium concentration at any drinking water intake would remain well below the maximum permissible Environmental Protection Agency (EPA) drinking water limit of 20,000 picocuries per liter; (3) TPBAR irradiation would not have a significant adverse impact on the operation and safety of TVA reactor facilities, and the potential risks from accidents would remain essentially the same whether TPBARs were irradiated in a TVA reactor or not; and (4) irradiation of 2,500 TPBARs in a single reactor would increase spent nuclear fuel generation by about 24 percent per fuel cycle and irradiation of 5,000 TPBARs at a single site would increase spent nuclear fuel generation at either Watts Bar or Sequoyah by about 48 percent per fuel cycle; however, TVA has an infrastructure in place and has a plan to manage the increased volume of spent nuclear fuel assemblies.

The potential environmental impacts of each alternative are summarized for comparison in the Summary and Section 2.5 of the Final CLWR SEIS. Summary Table S–2 and Final CLWR SEIS Table 2–5 provide a summary of potential environmental impacts associated with the Preferred Alternative as well as a means for comparing the potential impacts of the Preferred Alterative with each of the analyzed alternatives.

Public Involvement

NNSA published a Notice of Intent to prepare the CLWR SEIS in the **Federal Register** (76 FR 60017) on September 28, 2011, to invite comments and suggestions on the proposed scope of the CLWR SEIS. NNSA requested public comments by mail, facsimile, or email by the close of the scoping period on November 14, 2011. A public scoping meeting took place on October 20, 2011, in Athens, Tennessee. NNSA considered all scoping comments it received in the preparation of the Draft CLWR SEIS.

In August 2014, NNSA published the Draft CLWR SEIS. The 45-day public comment period on the Draft CLWR SEIS began on August 8, 2014, and ended on September 22, 2014. During the comment period, public hearings were held to allow the public to comment on the Draft CLWR SEIS in Athens, Tennessee, on September 9, 2014; and Chattanooga, Tennessee, on September 10, 2014. In addition, NNSA accepted public comments via mail, email, and facsimile. NNSA considered all comments received in the preparation of the Final CLWR SEIS.

Comments on the Final CLWR SEIS

NNSA distributed the Final CLWR SEIS to Congressional members and committees; State and local governments; other Federal agencies, culturally affiliated American Indian tribal governments, non-governmental organizations, and other stakeholders including members of the public who requested the document. Also, the Final CLWR SEIS was made available via the DOE and NNSA Web sites. On March 4, 2016, EPA issued the notice of availability (NOA) for the Final CLWR SEIS (81 FR 11557). During the 30 days following publication of the NOA, NNSA received one comment letter from the EPA, dated April 4, 2016. The Appendix to this ROD identifies the comments contained in that letter and provides NNSA's responses. NNSA has concluded that those comments do not identify a need for further NEPA analysis.

Decision

NNSA has decided to implement the Preferred Alternative, Alternative 6, which allows for the irradiation of a total of 5,000 TPBARs every 18 months using both the Watts Bar and Sequoyah sites. Because TVA could irradiate a maximum of 2,500 TPBARs in any one reactor, one or both reactors at each of the sites could be used. For the analyses in the SEIS, NNSA assumed for Alternative 6 that each site would irradiate 2,500 TPBARs every 18 months. However, because the SEIS analyzes the impacts of irradiating up to 5,000 TPBARs at a single site, Alternative 6 is not intended to limit the number of TPBARs irradiated at either the Watts Bar or Sequoyah site, so long as no more than a total of 5,000 TPBARs is irradiated every 18 months, with no more than 2,500 TPBARs in any reactor core.

Basis for Decision

The 1999 EIS discusses NNSA's purpose and need to produce tritium by irradiating TPBARS in one or more CLWRs. That purpose and need remains unchanged and is the foundation for the decision announced in this ROD. In making its decision, NNSA considered potential environmental impacts of operations and activities, current and future mission needs and compatibility, TVA missions and reactor licensing considerations, technical and security considerations, availability of resources, and public comments on the CLWR SEIS.

The selection of Alternative 6 is based primarily on the increased flexibility that it affords to deal with currently unanticipated circumstances. With respect to potential human health and safety impacts, although irradiation of up to a maximum total of 5,000 TPBARs in an 18-month period will increase potential doses to workers and the public, all doses will be well within regulatory limits. The potential use of both the Watts Bar and Sequoyah sites provides both NNSA and TVA the greatest flexibility to meet future tritium production requirements, something the other alternatives do not provide. That is especially true now that four reactors (*i.e.*, the addition of Watts Bar 2) are potentially available to assist in meeting national security requirements.

Mitigation Measures

To mitigate potential impacts from tritium releases, TVA would construct and operate a 500,000-gallon tritiated water tank system at Sequoyah in the event of a decision to irradiate TPBARs at that site or to facilitate routine tritium management. This system would be similar to that at the Watts Bar site. TVA would use the Watts Bar and Sequoyah tank systems to store tritiated water after it passed through the liquid radioactive waste processing system. TVA would release the stored tritiated water to the Tennessee River by the existing pathways. The tank systems that TVA currently has in place at the Watts Bar site and would potentially have in place at the Sequoyah site would have sufficient capacity to store and release the water to the Tennessee River at appropriate times (that is, TVA will release stored tritiated water from the tank during times of higher river flows for better dilution), and it will enable TVA to minimize the potential impacts of tritiated water releases. The systems would enable TVA to plan fewer releases each year and to ensure that site effluents would continue to remain well below regulatory concentration limits. Additionally, TVA will continue to monitor its operations for emissions to air and water in accordance with its NRC licensing requirements. Lastly, NNSA is continuing TPBAR research efforts, with the goal to reduce tritium permeation into the reactor coolant.

Issued in Washington, DC, this 15th day of June, 2016.

Frank G. Klotz,

Under Secretary for Nuclear Security, Administrator, National Nuclear Security Administration.

Appendix: Comments Received on the Final CLWR SEIS

NNSA received one comment letter on the Final CLWR SEIS. That letter, from the EPA dated April 4, 2016, contained comments on three topics which NNSA is addressing in this Appendix to the ROD.

The first EPA comment was a recommendation that radiological and effluent monitoring should continue as the Project progresses. NNSA and TVA agree with this recommendation and note that TVA will continue to monitor its operations for emissions to air and water in accordance with its NRC licensing requirements.

The second EPA comment was a recommendation that the Project Team continue to work closely with any affected communities, regulatory agencies, and other stakeholders as the Project progresses. The EPA specifically identified radiological and effluent monitoring, as well as spent nuclear fuel management, as issues relevant to such coordination. In response to this comment, the NNSA and TVA reiterate their commitment to closely coordinate with any potentially affected communities, regulatory agencies, and other stakeholders as the Project progresses. Notifications of notable Project activities will be posted on both TVA and NNSA public information Web sites, as appropriate, and all regulatory requirements will be met in an open and transparent manner. NNSA and TVA welcome public involvement as the Project progresses.

The third EPA comment was a request that the ROD further evaluate the potential consequences of a breached holding tank releasing water containing tritium to the owner-controlled area and flowing to the Tennessee River. Such a scenario is addressed in the SEIS, in Section 1.6, with the conclusion that the EPA drinking water limit of 20,000 picocuries per liter would not be exceeded at the nearest community drinking water intake in the event of an instantaneous release of the maximum expected quantity of tritiated water in the tank. That conclusion is based on the assumption that the tritiated water would be reasonably well-mixed into the river by the time the flow reached the first community system drinking water intake.

In that scenario, the impacts (doses from drinking water consumption) on an annual basis would be no different than currently evaluated in Chapter 4 of the SEIS. In addition, during the NRC 10 CFR 50.59 regulatory process for the tank system, TVA analyzed the potential offsite dose that could result from the rupture of the tank and the release of the entire contents of the tank to the Tennessee River without any holdup or dilution prior to entering the river. The results of that analysis indicated that the offsite dose due to liquid releases (water ingestion, fish ingestion, and recreation) would be less than 0.21 millirem. Airborne offsite doses were calculated to be less than 1.5 millirem. These doses are well below all regulatory limits.

Design features and safety systems for the tritiated water tank system make such an instantaneous release/rupture unlikely. Specifically, the 500,000-gallon stainless steel tritiated water storage tank is set within a larger diameter open tank secondary containment structure to provide full capacity retention. A rain shield over the open containment tank connects to the primary tank above the usable level of the tank, providing a pathway into the secondary containment for all leaks on the side wall of the primary tank. The primary tank also includes an overflow line piped from beneath a top bladder to a 1000-gallon overflow storage tank located in the annulus between the primary and secondary tanks to contain overfills within the secondary tank. The bottoms of the tanks are separated with a mesh and any leakage between the two tank bottoms is directed to an alarmed sump inside the annulus area to provide leak detection. Piping outside of the tank is run inside a covered highway-rated concrete trench lined with epoxy and provided with a leak detection system.

[FR Doc. 2016–14775 Filed 6–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–421]

Application To Export Electric Energy; ReEnergy Fort Fairfield LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: ReEnergy Fort Fairfield LLC (Applicant or ReEnergy Fort Fairfield) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 22, 2016.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On May 12, 2016, DOE received an application from ReEnergy Fort Fairfield for authority to transmit electric energy from the United States to Canada from its 37 megawatt (MW) capacity biomass-fired electric generation facility located in Fort Fairfield, Maine.

In its application, ReEnergy Fort Fairfield states that it owns the 37 MW capacity generation facility noted above. ReEnergy Fort Fairfield proposes to transmit the electric output across the Emera Maine transmission system into Canada, where the power is wheeled through New Brunswick Power Corporation's (NBPC) transmission system, and is transmitted back into the United States over the international electric transmission lines of Maine Electric Power Company, Inc. (MEPCO) to ISO–NE. ReEnergy Fort Fairfield will use the same Emera Maine transmission facilities previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning ReEnergy Fort Fairfield's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–421. An additional copy is to be provided directly to both William Ralston, ReEnergy Fort Fairfield LLC, 30 Century Hill Drive, Suite 101, Latham, NY 12110 and to Stephen C. Palmer, Esq., Alston & Bird LLP, 950 F Street NW., Washington, DC 20004.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on June 15, 2016.

Brian Mills,

Senior Planning Advisor, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–14771 Filed 6–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: A meeting involving the Industry Advisory Board (IAB) to the International Energy Agency (IEA) in connection with the IEA's Training Session and Disruption Simulation Exercise (ERE8) will be held at the OECD Conference Centre, 2 Rue André-Pascal, 75016 Paris, France, on June 29–30, 2016. The purpose of this notice is to permit participation in ERE8 by U.S. company members of the IAB.

DATES: June 29–30, 2016.

ADDRESSES: 2 Rue André-Pascal, 75016 Paris, France.

FOR FURTHER INFORMATION CONTACT: Thomas Reilly, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–5000.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meetings is provided:

The ERE8 sessions will be held from 9:00 a.m.–5:30 p.m. on June 29, 2016 and from 9:30 a.m.–4:45 p.m. on June 30, 2016. The purpose of ERE8 is to train IEA Government delegates in the use of IEA emergency response procedures by reacting to a hypothetical oil supply disruption scenario.

The agenda for ERE8 is under the control of the IEA. ERE8 will involve break-out groups, the constitution of which is under the control of the IEA. The IEA anticipates that individual break-out groups will not include multiple IAB or Reporting Company representatives that would qualify them as separate "meetings" within the meaning of the Voluntary Agreement and Plan of Action to Implement the International Energy Program. It is expected that the IEA will adopt the following agenda:

Draft Agenda of the 2016 Eighth Emergency Response Exercise (ERE8)

Training Session and Disruption Simulation Exercise, 29–30 June 2016
OECD Conference Centre, 2, Rue André-Pascal, 75016 Paris, France

Day One: 29 June

Registration
Welcome to ERE8
Training Session 1
—Overview of IEA Emergency Response Policies
—Oil Markets During a Supply Disruption
—IEA Emergency Response Process
—Emergency Data Collection
Training Session 2
—Analysis of Previous ERE Scenario
—Media Perspective
Supply Disruption Scenario 1
—ERE8 Goals and Ground Rules, Scenario 1 Introduction and Breakout Session
Scenario 1 Plenary Session

Day Two: 30 June

Scenario 2: Introduction and Breakout Session
Scenario 2 Plenary Session
Scenario 3: Introduction and Breakout Session
Scenario 3 Plenary Session
ERE8 Round-Up and Concluding Remarks

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Markets (SOM); representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accountability Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC, June 16, 2016.

Thomas Reilly,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 2016–14780 Filed 6–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Materials Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site (known locally as the Savannah River Site Citizens Advisory Board [SRS CAB]). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, July 12, 2016, 4:30 p.m.–7:00 p.m.

ADDRESSES: New Ellenton Community Center, 212 Pine Hill Avenue, New Ellenton, South Carolina 29809.

FOR FURTHER INFORMATION CONTACT: James Giusti, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7684.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Nuclear Materials Committee: The Nuclear Materials Committee was established to study issues that involve nuclear materials that impact present or future SRS activities, including used nuclear fuel program activities, nuclear materials management and nuclear materials integration.

Tentative Agenda

- Welcome and Opening Remarks
- Discussion of Proposed Committee Recommendations and Position Papers
- Public Comments
- Adjourn

Public Participation: The SRS CAB's Committee welcomes the attendance of the public at their committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Giusti at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact James Giusti's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling James Giusti at the address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC, on June 16, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–14773 Filed 6–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1924–000]

Bison Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Bison Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 6, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–14769 Filed 6–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–72–000]

NRG Power Midwest, LP; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 16, 2016, the Commission issued an order in Docket No. EL16–72–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of NRG Power Midwest, LP's Revised Reactive Rate Schedule. *NRG Power Midwest, LP,* 155 FERC ¶ 61,256 (2016).

The refund effective date in Docket No. EL16–72–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: June 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–14767 Filed 6–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1926–000]

San Isabel Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of San Isabel Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 6, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–14757 Filed 6–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–199]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Non-Capacity Amendment of License.

b. Project No: P–2146–199.

c. Date Filed: June 9, 2016.

d. Applicant: Alabama Power Company (Alabama Power).

e. Name of Project: Coosa River Project.

f. Location: The project is located on the Coosa River, in Coosa, Chilton, and Elmore counties, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791a–825r.

h. Applicant Contact: James F. Crew, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291–8180, (205) 257–4265.

i. FERC Contact: Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests: July 1, 2016.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2146–199.

k. *Description of Request:* Alabama Power requests approval to modify Unit 1 at the Jordan Development to address significant maintenance needs and to improve power and efficiency. The proposed scope of work for Unit 1 includes complete turbine replacement, wicket gate replacement, governor and servomotor system replacement, turbine and thrust bearing refurbishment, and related component replacement. Alabama Power also proposes to extend of vacuum breaker piping to enhance Unit 1's aerating capability through a draft tube aeration system that will be operated in a similar manner as Units 2, 3, and 4. Alabama Power states the turbine replacement is not expected to result in an increase to the total rated capacity or the maximum discharge of the unit at rated conditions. Alabama Power notes that project operations will not change, refurbishment will not include any structural changes to the project facilities, and no changes will be made to the project boundary.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits (P–2146) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works that are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–14758 Filed 6–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2275–001; EC14–129–001.

Applicants: Lexington Power & Light, LLC.

Description: Notice of Material Change in Status of Lexington Power & Light, LLC.

Filed Date: 6/15/16.

Accession Number: 20160615–5163.

Comments Due: 5 p.m. ET 7/6/16.

Docket Numbers: ER14–2952–005.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Report Filing: 2016–06–15_SSR Cost Allocation Refund Report Supplement to be effective N/A.

Filed Date: 6/15/16.

Accession Number: 20160615–5028.

Comments Due: 5 p.m. ET 7/6/16.

Docket Numbers: ER16–425–003.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance re: effective date scarcity pricing spplmntl rvsns to be effective 6/30/2016.

Filed Date: 6/16/16.

Accession Number: 20160616–5132.

Comments Due: 5 p.m. ET 6/28/16.

Docket Numbers: ER16–1944–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Amendment to WMPA SA No. 3236, Queue No. W4–064 to be effective 3/6/2015.

Filed Date: 6/16/16.

Accession Number: 20160616–5096.

Comments Due: 5 p.m. ET 7/7/16

Docket Numbers: ER16–1945–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 3211 NIMECA NITSA NOA; Cancellation of 3124 Basin NITSA NOA to be effective 6/1/2016.

Filed Date: 6/16/16.

Accession Number: 20160616–5098.

Comments Due: 5 p.m. ET 7/7/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–14765 Filed 6–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD16–13–000]

Three Sisters Irrigation District; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On June 2, 2016, as supplemented on June 13, 2016, Three Sisters Irrigation District filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Watson Net Meter/Micro Hydroelectric Demonstration Facility would have an installed capacity of 198.6 kilowatts (kW), and would be located along the outlet pipe for an existing irrigation pipeline, the Watson McKenzie Main Canal South Pipe. The project would be located in the town of Sisters, Deschutes County, Oregon.

Applicant Contact: Marc Thalacker, P.O. Box 2230, Sisters, OR 97759, Phone No. (541) 549–8815.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: *Christopher.Chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A new powerhouse, approximately 20 feet by 40 feet, along the existing 24-inch-diameter outlet pipe of the 54-inch-diameter Watson McKenzie Main Canal South Pipe; (2) four new turbine/generating units with a total installed capacity of 198.6 kW; (3) four new, short intake pipes of variable diameters; (4) four new, short discharge pipes of variable diameters; (5) a discharge pool structure, approximately 13.5 feet by 25 feet, with two 36-inch-diameter outlet pipes to Watson Reservoir; and (6) appurtenant facilities.

The proposed project would have a total installed capacity of 198.6 kW.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ..	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed addition of the hydroelectric project along the existing irrigation pipeline will not alter its primary purpose. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the "COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY" or "MOTION TO INTERVENE," as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866)

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[1] 18 CFR 385.2001–2005 (2015).

208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the "eLibrary" link. Enter the docket number (*i.e.*, CD16–13) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: June 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–14762 Filed 6–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1925–000]

Pavant Solar II LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pavant Solar II LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 6, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–14756 Filed 6–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–93–000.
Applicants: Atlas Power Finance, LLC, Dynegy Inc., Energy Capital Partners III, LLC, GDF Suez Energy North America, Inc.
Description: Supplement to March 25, 2016 Joint Application for Authorization under FPA Section 203 of Atlas Power Finance, et al.
Filed Date: 6/15/16.
Accession Number: 20160615–5149.
Comments Due: 5 p.m. ET 6/29/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1254–002.
Applicants: MMP SCO, LLC.
Description: Tariff Amendment: Second Amendment to Application for Market-Based Rate Authorization to be effective 6/15/2016.
Filed Date: 6/15/16.
Accession Number: 20160615–5131.
Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: ER16–1882–000.
Applicants: Boulder Solar Power, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Tariff to be effective 7/1/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5296.
Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER16–1940–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: SA 358—Construction Agreement with PAC for Siphon Tap-Pingree Tap Line Rebuild to be effective 6/1/2016.
Filed Date: 6/16/16.
Accession Number: 20160616–5000.
Comments Due: 5 p.m. ET 7/7/16.

Docket Numbers: ER16–1941–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: 2016 Revised Added Facilities Rate under WDAT—Filing No. 14 to be effective 1/1/2016.
Filed Date: 6/16/16.
Accession Number: 20160616–5003.
Comments Due: 5 p.m. ET 7/7/16.

Docket Numbers: ER16–1942–000.
Applicants: WM North Broward, Inc.
Description: Notice of Cancellation market-based rate tariff of WM North Broward, Inc.
Filed Date: 6/16/16.
Accession Number: 20160616–5042.
Comments Due: 5 p.m. ET 7/7/16.

Docket Numbers: ER16–1943–000.
Applicants: Illinois Power Marketing Company.
Description: Compliance filing: 2013 System Support Resource Agreement Compliance Filing to be effective 1/1/2013.
Filed Date: 6/16/16.
Accession Number: 20160616–5053.
Comments Due: 5 p.m. ET 7/7/16.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR16–4–000.
Applicants: North American Electric Reliability Corp.
Description: North American Electric Reliability Corporation's Revised Report of Comparisons of Budgeted to Actual

Costs for 2015 for NERC and the Regional Entities.

Filed Date: 6/15/16.

Accession Number: 20160615–5156.

Comments Due: 5 p.m. ET 7/6/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–14763 Filed 6–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–61–000]

Midcontinent Independent System Operator, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 16, 2016, the Commission issued an order in Docket No. EL16–61–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Midcontinent Independent System Operator, Inc.'s Open Access Transmission, Energy and Operating Reserve Markets Tariff . *Midcontinent Independent System Operator, Inc.,* 155 FERC ¶ 61,254 (2016).

The refund effective date in Docket No. EL16–61–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: June 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–14766 Filed 6–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1882–000]

Boulder Solar Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Boulder Solar Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 6, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–14768 Filed 6–21–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0324; FRL–9947–51]

Pyridate; Receipt of Applications for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Montana and the North Dakota Departments of Agriculture to use the herbicide pyridate (CAS No. 55512–33–9) on chickpea to control kochia, including glyphosate-resistant kochia. The applicants propose a use of a pesticide that was voluntarily canceled in 2004, and which is now considered to be unregistered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before July 7, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0324, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division

(7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html*.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the FIFRA (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Montana and North Dakota Departments of Agriculture have requested the EPA Administrator to issue specific exemptions for the use of pyridate on chickpea to control kochia, including glyphosate-resistant kochia in chickpea. Information in accordance with 40 CFR part 166 was submitted as part of this request. The Applicants' submissions which provide an explanation of the need for the exemption as well as the proposed use pattern can be found at *http://www.regulations.gov* in the following documents "Montana Section 18 Exemption Request For Tough® Herbicide (pyridate) in Chickpea" and "North Dakota Section 18 Exemption Request For Tough® Herbicide (pyridate) in Chickpea".

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for specific exemptions proposing use of a pesticide that was voluntarily canceled in 2004, and which is now considered to be unregistered under the FIFRA.

The notice provides an opportunity for public comment on the applications. The Agency, will review and consider all comments received during the comment period in determining whether to issue specific exemptions requested by the Montana and North Dakota Departments of Agriculture.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 13, 2016.

Daniel J. Rosenblatt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–14813 Filed 6–21–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1192]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 22, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1192.

Title: Survey of Urban Rates, DA 13–598.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Providers of fixed voice and fixed broadband residential services.

Number of Respondents and Responses: 1,000 respondents; 1,000 responses.

Estimated Time per Response: 3.5 hours.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Obligation To Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 254(b).

Total Annual Burden: 3,500 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission. Also, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: In April 2013, the Wireline Competition Bureau of the Federal Communications Commission adopted an Order (Order), in WC Docket No. 10–90; DA 13–598, 78 FR 29063, Connect America Fund. The Order adopted the form and content for a survey of urban rates for fixed voice and fixed broadband residential services for purposes of implementing various reforms adopted as part of the USF/ICC Transformation Order, 76 FR 73830, November 29, 2011. The information collected in this survey will be used to establish a rate floor that eligible telecommunications carriers (ETCs) receiving high-cost loop support (HCLS) or frozen high-cost support must meet to receive their full support amounts and to help ensure that universal service support recipients offering fixed voice and broadband services do so at reasonably comparable rates to those in urban areas. The rate floor and comparability requirements are important components of the Commission's overall effort to improve accountability for the use of universal service funding. The rate floor will prevent the use of universal service subsidizes to support artificially low local rates in rural areas. The comparability requirements will ensure that rates are reasonably comparable for voice as well as broadband service, between urban and rural, insular, and high cost areas. Rates must be reasonably comparable so that consumers in rural, insular, and high cost areas have meaningful access to these services. This Order required a statistically valid sample of urban providers to complete a survey with information regarding the types and prices of their offerings. The Commission conducts this survey through an online reporting form accessible to those urban providers of fixed voice and broadband services that are chosen to participate.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–14794 Filed 6–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10498, AztecAmerica Bank, Berwyn, Illinois

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for AztecAmerica Bank, Berwyn, Illinois ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of AztecAmerica Bank on May 16, 2014. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: June 16, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–14661 Filed 6–21–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011426–061.

Title: West Coast of South America Discussion Agreement.

Parties: CMA CGM S.A.; Hamburg-Süd; Hapg-Lloyd AG; Mediterranean Shipping Company, SA; and Seaboard Marine Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The amendment would add King Ocean Services Limited, Inc. as a party to the agreement.

Agreement No.: 011574–019.

Title: Pacific Islands Discussion Agreement.

Parties: Hamburg Sud KG doing business under its own name and the name Fesco Australia/New Zealand Liner Services (FANZL); and Polynesia Line Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The amendment deletes CMA–CGM SA and Compagnie Maritime Marfret SA as parties to the agreement.

Agreement No.: 012243–001.

Title: MOL/Glovis Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd. and Hyundai Glovis Co., Ltd.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 799 9th Street NW., Suite 500, Washington, DC 20001.

Synopsis: The amendment adds the trade between Mexico and the United States to the geographic scope, authorizes MOL to charter space to Glovis, and clarifies the nature of the cargo covered by the Agreement.

Agreement No.: 012375.

Title: Hanjin/Zim Slot Exchange Agreement.

Parties: Hanjin Shipping Co., Ltd. and Zim Integrated Shipping Services, Ltd.

Filing Party: Mark E. Newcomb; ZIM American Integrated Shipping Services Co., LLC; 5801 Lake Wright Dr., Norfolk, VA 23508.

Synopsis: The amendment would add Taiwan, Malaysia, and Singapore to the geographic scope, and increase the slot sale and purchase authority to 2,000 TEUs per sailing.

Agreement No.: 012293–006.

Title: Maersk/MSC Vessel Sharing Agreement.

Parties: Maersk Line A/S and MSC Mediterranean Shipping Company S.A.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth St. NW., Washington, DC 20036.

Synopsis: The Amendment would increase the number of vessels the Parties are authorized to operate in the U.S. trades.

By Order of the Federal Maritime Commission.

Dated: June 17, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–14814 Filed 6–21–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 7, 2016.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *Helen Parrish Beach, Lexington, Kentucky, to acquire voting shares as part of a family control group of Genbeach Company, Inc., Winchester, Kentucky* and thereby indirectly retain control of Peoples Exchange Bank, Winchester, *Kentucky.*

B. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. The *Willits Family Partnership, and its proposed general partner, the Lydia Willits Bartholomew Trust #2, each of Malvern, Pennsylvania, and its trustee Jamie Bartholomew Aller, West Chester, Pennsylvania, together with the Lydia Willits Bartholomew Trust #1, Malvern, Pennsylvania, Andrew Marshall Bartholomew II, Malvern, Pennsylvania, and William Brinton Bartholomew, William Evans Lincoln Howard V, and Lydia Willits Bartholomew, each of West Chester, Pennsylvania, all together a group acting in concert to acquire voting shares of Malvern Bank Corporation, Malvern, Pennsylvania* and thereby indirectly acquire shares of The National Bank of Malvern, Malvern, Pennsylvania.

Board of Governors of the Federal Reserve System, June 17, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–14737 Filed 6–21–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 18, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Citizens National Corporation, Wisner, Nebraska;* to acquire up to an additional 0.57 percent, for a total of 35.12 percent of the voting shares of Republic Corporation, and thereby indirectly acquire control of United Republic Bank, both of Omaha, Nebraska.

Board of Governors of the Federal Reserve System, June 17, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–14749 Filed 6–21–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16ARH; Docket No. CDC–2016–0053]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the proposed information collection entitled "Poison Center Collaborations for Public Health Emergencies." The goal for this new information collection is to create a timely generic clearance mechanism to allow a network of U.S. poison centers, in collaboration with CDC, to obtain

critical exposure and health information during public health emergencies. CDC will collect follow-up information not captured during poison center callers' initial calls.

DATES: Written comments must be received on or before August 22, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0053 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Poison Center Collaborations for Public Health Emergencies—NEW—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Centers for Disease Control and Prevention (CDC) is requesting a three-year Paperwork Reduction Act (PRA) clearance for a new generic clearance information collection request (Generic ICR) titled "Poison Center Collaborations for Public Health Emergencies."

CDC's key partner, the American Association of Poison Control Centers (AAPCC), is a national network of 55 poison centers working to prevent and treat poison exposures. The goal for this new Generic ICR is to create a timely mechanism to allow poison centers, in collaboration with CDC, to obtain critical exposure and health information during public health emergencies. This information is not captured during initial poison center calls about triage and treatment of potential poison exposures. Additional data collections are needed quickly to further characterize exposures, risk factors, and illnesses.

When a public health emergency of interest to CDC and AAPCC occurs, the CDC and AAPCC hold a meeting to mutually decide whether the incident needs further investigation. For a public health emergency to be selected for call-back, adverse health effects must have occurred and a response is needed to prevent further morbidity and mortality. The event must meet the criteria below:

(1) The event is a public health emergency causing adverse health effects.

(2) Timely data are urgently needed to inform rapid public health action to prevent or reduce injury, disease, or death.

(3) The event is characterized by a natural or man-made disaster, contaminated food or water, a new or existing consumer product, or an emerging public health threat.

(4) The event has resulted in calls to a poison center, and the poison center agrees to conduct the call-back data collection.

(5) The event is domestic.

(6) Data collection will be completed in 60 days or less.

Trained poison center staff will conduct the call-back telephone survey, after administering consent. Respondents will include individuals who call poison centers about exposures related to the select public health emergencies. These respondents include adults, 18 years and older; adolescents, 15 to less than 18 years; and parents or guardians on behalf of their children less than 15 years of age.

The total estimate of 300 annual respondents is based on poison center experience which assumes two incidents per year with approximately 150 respondents per event. The average burden per respondent is approximately 40 minutes for the call-back questionnaire. We anticipate a total annualized burden of 200 hours.

There is no cost to the respondents other than their time.

ESTIMATED ANNUAL REPORTING BURDEN

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Adult Poison Center Callers	Call-back Questionnaire for Self	210	1	40/60	140
Adolescent Poison Center Callers	Call-back Questionnaire for Self	30	1	40/60	20
Parent or Guardian Poison Center Callers.	Call-back Questionnaire for Proxy	60	1	40/60	40
Total					200

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–14726 Filed 6–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–0997; Docket No. CDC–2016–0054]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on Using the Standardized National Hypothesis Generating Questionnaire during Multistate Investigations of Foodborne Disease Clusters and Outbreaks.

DATES: Written comments must be received on or before August 22, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0054 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Standardized National Hypothesis Generating Questionnaire (0920–0997, Expiration Date 10/31/2016)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

It is estimated that each year roughly 1 in 6 Americans gets sick, 128,000 are hospitalized, and 3,000 die of foodborne diseases. CDC and partners ensure rapid and coordinated surveillance, detection, and response to multistate outbreaks, to limit the number of illnesses, and to learn how to prevent similar outbreaks from happening in the future.

Conducting interviews during the initial hypothesis-generating phase of multistate foodborne disease outbreaks presents numerous challenges. In the U.S. there is not a standard, national form or data collection system for illnesses caused by many enteric pathogens. Data elements for hypothesis generation must be developed and agreed upon for each investigation. This process can take several days to weeks and may cause interviews to occur long after a person becomes ill.

CDC requests a revision to this project to collect standardized information, called the Standardized National Hypothesis-Generating Questionnaire, from individuals who have become ill during a multistate foodborne disease event. Since the questionnaire is designed to be administered by public health officials as part of multistate hypothesis-generating interview activities, this questionnaire is not expected to entail significant burden to respondents.

The Standardized National Hypothesis-Generating Core Elements Project was established with the goal to define a core set of data elements to be used for hypothesis generation during multistate foodborne investigations. These elements represent the minimum set of information that should be available for all outbreak-associated cases identified during hypothesis generation. The core elements would ensure that similar exposures would be ascertained across many jurisdictions, allowing for rapid pooling of data to improve the timeliness of hypothesis-generating analyses and shorten the time to pinpoint how and where contamination events occur.

The Standardized National Hypothesis Generating Questionnaire was designed as a data collection tool for the core elements, to be used when a multistate cluster of enteric disease infections is identified. The questionnaire is designed to be administered over the phone by public health officials to collect core elements data from case-patients or their proxies. Both the content of the questionnaire (the core elements) and the format were developed through a series of working groups comprised of local, state, and federal public health partners.

Since implementation of the SNHGQ in 2013, ORPB has investigated over 700 multistate foodborne and enteric clusters of infection involving over 26,000 ill people. Of which, an outbreak vehicle has been identified in 200 of these investigations. These outbreaks have led to over 50 recalls and countless regulatory actions that have removed millions of pounds of contaminated vehicles out of commerce. In almost all instances, the SNHGQ or iterations of the SNHGQ have been instrumental in the successful investigation of these outbreaks. The questionnaire has allowed investigators to more efficiently and effectively interview ill persons as they are identified. Because these exposures are captured in a common, standard format, we have been able to share and analyze data rapidly across jurisdictional lines. Faster interview response and analysis times have allowed for more rapid epidemiologic investigation and quicker regulatory action, thus helping to prevent thousands of additional illnesses from occurring and spurring industry to adopt and implement new food safety measures in an effort to prevent future outbreaks.

The total estimated annualized burden for the Standardized National Generating Questionnaire is 3,000 hours (approximately 4,000 individuals identified during the hypothesis-generating phase of outbreak investigations with 45 minutes/response).

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs)
Individuals	Standardized National Hypothesis Generating Questionnaire (Core Elements).	4,000	1	45/60	3,000
Total					3,000

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–14727 Filed 6–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

Amendment: A notice of this meeting was published in the **Federal Register** on May 24, 2016, Volume 81, Number 100, Pages 32754–32755. The original notice is amended to include Matters for Discussion as follows:

Matters for Discussion: The agenda will include discussions on meningococcal vaccines; human papillomavirus vaccines; influenza; cholera vaccine; hepatitis vaccines; safety of maternal Tdap vaccination; Respiratory Syncytial Virus (RSV) and vaccine supply. A recommendation vote is scheduled for meningococcal vaccines, influenza vaccine, and cholera vaccine. A VFC vote is scheduled for meningococcal vaccines, and influenza.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Stephanie Thomas, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road NE., MS–A27, Atlanta, Georgia 30329, telephone 404/639–8836; Email *ACIP@CDC.GOV.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2016–14787 Filed 6–21–16; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16UW]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Case Investigation of Cervical Cancer (CICC) Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Invasive cervical cancer occurs when cervical cancer spreads from the surface of the cervix to deeper cervical tissue or to other parts of the body. In the United States, invasive cervical cancer is largely preventable due to the availability of (1) screening tests, which allow for early detection and treatment of cervical pre-cancers, and (2) a vaccine that prevents infection with types of human papillomavirus (HPV) which are associated with over 80% of cervical cancers. However, one previous study showed that half of the women who developed cervical cancer had not been adequately screened, and a more recent study showed that there were still approximately 8 million women in the U.S. who had not been screened for cervical cancer in the previous five years.

CDC plans to conduct the Case Investigation of Cervical Cancer (CICC) Study to improve understanding of the facilitators and barriers to cervical cancer screening and timely follow-up of abnormal test results. The proposed project will identify women recently diagnosed with invasive cervical cancer (2014–2016) through cancer registries in three states. Each registry will enroll cancer survivors within that state who consent to participate in the study.

Three types of data will be collected. (1) Existing cancer registry data will provide information on tumor characteristics, diagnosis, and stage of cancer. This will be used to describe the characteristics of the sample of survivors and for the identification of the eligible sample. (2) Participants will be asked to complete a survey. The purpose of the survey is to identify self-reported barriers and facilitators to screening and care, and to examine recall of screening tests. (3) Participants will also be asked to complete medical release and healthcare source forms to permit medical chart abstraction. The purpose of the medical chart abstraction is to obtain detailed clinical information about all screening and treatment prior to diagnosis. Together the information from these three sources of data will be used to identify opportunities for intervention to reach women and their providers in order to increase screening and appropriate follow-up care.

Based on preliminary data from three state cancer registries, a total of approximately 1,670 eligible cervical cancer survivors are eligible for participation. CDC estimates a survey response rate of 50% of across the entire sample (N = 835) followed by an 80% response rate to the medical release and healthcare source forms (N = 668). These estimates yield approximately 668 women with complete data for both surveys and chart abstraction. The estimated burden per response for completing the mail-in questionnaire is 15 minutes. The estimated burden per response for the medical release and healthcare source forms is five minutes. For each CICC participant, the medical chart abstraction process is expected to require follow-up with 1–5 (average of 3) health care providers (N = 2,004). The estimated burden for support activities conducted by office assistants at the health care facilities associated with each medical record abstraction is five minutes.

OMB approval is requested for two years. Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 217.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Invasive cervical cancer survivors	Case Investigation of Cervical Cancer Study Survey.	418	1	15/60
	Medical Release and Healthcare Source Forms.	314	1	5/60
Health care office assistant	Support for medical record abstraction	1,002	1	5/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–14725 Filed 6–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting for the aforementioned committee:

Times and Dates: 9:00 a.m.–5:00 p.m., EDT, July 14, 2016; 9:00 a.m.–12:00 p.m., EDT, July 15, 2016.

Place: Centers for Disease Control and Prevention, Global Communications Center, Building 19, Auditorium B, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 300 people. Please register for the meeting at *www.cdc.gov/hicpac.*

Purpose: The Committee is charged with providing advice and guidance to the Director, Division of Healthcare Quality Promotion, the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), the Director, CDC, the Secretary, Health and Human Services regarding (1) the practice of healthcare infection prevention and control; (2) strategies for surveillance, prevention, and control of infections, antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of CDC guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters for Discussion: The agenda will include updates on CDC's activities for prevention of healthcare associated infections (HAIs), updates on antimicrobial stewardship, an update on Draft Guideline for Prevention of Infections in Healthcare Personnel, and an update from the workgroup for considerations on endoscope reprocessing.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Erin Stone, M.S., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE., Mailstop A–07, Atlanta, Georgia 30333 Telephone (404) 639–4045, Email: *hicpac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–14788 Filed 6–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16TL]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Health Risks from Using Private Wells for Drinking Water—New — National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Safe Drinking Water Act of 1974 (SDWA) ensures that most Americans are provided access to water that meets established public health standards. However, for over 38 million Americans who rely on private wells or other drinking water not protected by the SDWA (herein referred to as private wells), that is not the case. There is no comprehensive knowledge about the locations of private wells, the populations served by these sources, potential contaminants that might be present in private well water in specific areas of the country, or the potential health risks associated with drinking water from these sources.

The purpose of this new generic clearance information collection request is to assess the health risks associated with exposure to contaminants in drinking water from private wells across varied geographic areas of the United States in partnership with the requesting agency (state, territorial, local, or tribal health department). The information obtained from these investigations will be used to describe health risks from exposure to contaminants in drinking water from private wells within a defined time period and geographic distribution. This information will be used to inform public health protection activities conducted by the requesting agencies.

The respondents are defined as adults at least 18 years old, who use private wells for drinking water, who are willing to receive and return a tap water sampling kit and urine specimen kit or to provide a blood specimen, and who are willing to answer survey questions. They will be recruited from geographic areas of interest as defined by the requesting agency.

Based on our historical activities, we estimate that CDC will conduct up to 10 investigations per year. Each investigation will involve on average 200 respondents. The total time burden is 2,084 hours. There will be no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Adult at least 18 years old using a private well for tap water.	Screening Form	2,500	1	6/60
	Questionnaire	2,000	1	35/60
	Urine Specimen and Tap Water Sample Collection.	2,000	1	20/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–14724 Filed 6–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1543]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Nonproprietary Naming of Biological Products; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Withdrawal of notice.

SUMMARY: This document withdraws a Food and Drug Administration (FDA) notice that published in the **Federal Register** of June 2, 2016 (81 FR 35367).

DATES: This notice is withdrawn on June 22, 2016.

FOR FURTHER INFORMATION CONTACT: Howard Muller, Center for Drug Evaluation and Research (CDER), 10903 New Hampshire Ave., Bldg. 51, Rm. 6234, Silver Spring, MD 20993–0002, 301–796–3474.

SUPPLEMENTARY INFORMATION: FDA published a notice in the **Federal Register** of June 2, 2016, informing interested parties that the proposed collection of information entitled "Guidance for Industry on Nonproprietary Naming of Biological Products" had been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 and inviting the public to submit comments on the proposed collection to OMB. FDA is withdrawing the proposed collection of information that published on June 2, 2016, at this time.

Dated: June 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14722 Filed 6–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than August 22, 2016.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N–39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Data Collection Tool for State Offices of Rural Health Grant Program

OMB No. 0915–0322—Extension

Abstract: The mission of the Federal Office of Rural Health Policy (FORHP) is to sustain and improve access to quality care services for rural communities. In its authorizing language (section 711 of the Social Security Act [42 U.S.C. 912]), Congress charged FORHP with administering grants, cooperative agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas. In accordance with the Public Health Service Act, section 338J (42 U.S.C. 254r), HRSA proposes to continue the State Offices of Rural Health (SORH) Grant Program—Funding Opportunity Announcement (FOA) and Forms for the Application. The FOA is used by 50 states in preparing applications for grants under the SORH Grant Program of the Public Health Service Act, and in preparing the required report.

Need and Proposed Use of the Information: FORHP seeks to continue gathering information from grantees on their efforts to provide technical assistance to clients within their states. SORH grantees submit a Technical Assistance Report that includes: (1) The total number of technical assistance encounters provided directly by the grantee, and (2) the total number of unduplicated clients that received direct technical assistance from the grantee. The Technical Assistance Report is submitted via the HRSA Electronic

Handbook no later than 30 days after the end of each 12-month budget period.

Likely Respondents: Fifty State Offices of Rural Health.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Technical Assistance Report	50	1	50	12.5	625
Total	50		50		625

HRSA specifically requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–14658 Filed 6–21–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authority

Notice is hereby given that I have delegated to the Office of the Inspector General (OIG) the acquisition administrative authorities of the Secretary, except the authority to approve and issue HHS Acquisition Regulations.

In addition, by the authority vested in the Secretary by section 1702 of Title 41 pf the United States Code (Pub. L. 111–350, § 3, Jan. 4, 2011), I have designated; (a) the Inspector General as the OIG Chief Acquisition Officer; and (b) the Principal Deputy Inspector General as OIG Senior Procurement Executive.

I also delegate to the Inspector General the authority under section 1705 of Title 41 of the United States Code (Pub. L. 111–350, § 3, Jan. 4, 2011) to designate a competition advocate for OIG. The authorities may be re-delegated to the extent permitted by law.

With respect to the HHS Acquisition Regulations only, the Inspector General will be considered an OPDIV head for the purposes of the December 21, 1994, delegation from the Secretary to the OPDIV heads to approve and issue noncontroversial regulations.

Exercise of these authorities shall be in accordance with established policies, procedures, guidelines, and regulations as prescribed by the Secretary.

This delegation is effective on the date of signature.

Dated: June 16, 2016.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2016–14802 Filed 6–21–16; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–14–315: Developing and Testing Interventions for Health-Enhancing Physical Activity.

Date: July 1, 2016.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Psycho/Neuropathology, Lifespan Development, and STEM Education Overflow.

Date: July 6, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John H. Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Developmental Risk Prevention, Aging and Social Behavior.

Date: July 7, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Behavioral Genetics and Epidemiology.

Date: July 8, 2016.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Valerie Durrant, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 827–6390, *durrantv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risk, Prevention, and Health Behavior.

Date: July 11–12, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 435–3575, *faradaym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Phenix: Integrated Algorithms for High Quality Models from Crystallographic and Cryo-EM data.

Date: July 21–22, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: C-L Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Transducers of Physical Activity Bioinformatics and Consortium Coordinating Centers (U24).

Date: July 21, 2016.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kee Hyang Pyon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, *pyonkh2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biology of Retina and Lens.

Date: July 21, 2016.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maqsood A. Wani, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 16, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14692 Filed 6–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Transducers of Physical Activity Clinical Centers (U01).

Date: July 11, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Inese Z. Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Toxicology and Digestive, Kidney and Urological Systems AREA Review.

Date: July 12–13, 2016.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Mechanisms of Cell Division.

Date: July 15, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology.

Date: July 15, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapeutics.

Date: July 15, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Careen K. Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–3504, *tothct@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell and Molecular Biology.

Date: July 19–20, 2016.

Time: 10:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Ross D Shonat, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6196, MSC 7804, Bethesda, MD 20892, 301–435–2786, *ross.shonat@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Eukaryotic Parasites and Vectors.
Date: July 20–21, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Fouad A El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: PAR–14–021: Comprehensive Biology: Exploiting the Yeast Genome.
Date: July 20–22, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Deca Seattle, 4507 Brooklyn Avenue NE., Seattle, WA 28105.
Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; US.-China Program for Collaborative Biomedical Research.
Date: July 20–21, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.
Date: July 20–21, 2016.
Time: 9:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sudha Veeraraghavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1504, *sudha.veeraraghavan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cellular and Physiological Mechanism of Diabetes and Obesity.
Date: July 20, 2016.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 15, 2016.

David Clary,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14690 Filed 6–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurological, Aging and Musculoskeletal Epidemiology (NAME).
Date: June 27–28, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurological, Aging, and Musculoskeletal Epidemiological Study Section: R03 and R21 Applications.
Date: July 15, 2016.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 15, 2016.

David Clary,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14691 Filed 6–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Mental Health

Request for Information on the Availability of Biological Samples to Evaluate the Technical Performance of Inflammatory Markers

SUMMARY: The National Institute of Mental Health (NIMH) seeks information about the availability of data and existing biological specimens (plasma and cerebrospinal fluid (CSF)) obtained from healthy controls and clinically well-characterized individuals with mental illnesses (bipolar disorder, major depressive disorder, post-traumatic stress disorder, schizophrenia). This information will be used to identify biobanks of existing samples that could potentially be sourced to assess the technical performance of a panel of inflammation-related proteins, and to identify gaps in the availability of samples for the mental illnesses listed above.

DATES: All responses must be submitted via email to *biospecimens2@mail.nih.gov* by August 4, 2016.

ADDRESSES: Please direct all inquiries to: *biospecimens2@mail.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy L. Desmond, Ph.D., Division of

Neuroscience & Basic Behavioral Science, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., MSC9645, Bethesda, MD 20892–9645, *biospecimens2@mail.nih.gov*, 301–443–3107.

SUPPLEMENTARY INFORMATION: Sample collection, processing, and storage procedures have the potential to affect assay results for basic research, biomarker discovery, biomarker validation, and development of validated assays. Variability in these procedures may also decrease data rigor, thereby increasing the likelihood of irreproducible data, incorrect conclusions, and delays in advancing scientific knowledge.

Recent genetic studies have provided compelling evidence in support of the long-held hypothesis that alterations in immune function are associated with the pathophysiology of mental illnesses. Abnormal blood levels of cytokines have been reported in schizophrenia, bipolar disorder and major depressive illness. However, our understanding of the role of immune system markers in mental illnesses has not advanced due in part to between-study heterogeneity in immune assay methodology, diagnosis criteria, severity of disease, number and age of samples, and other potential confounds (*e.g.*, medication, comorbidities) (Goldsmith, DR et al., Mol. Psychiatry, 23 February 2016; doi:10.1038/mp.2016.3).

The creation of an agreed upon, standard panel of pro- and anti-inflammatory markers, along with adoption of a standard approach for sample collection and handling, would be a valuable resource for evaluation of inflammatory processes in mental illnesses.

This request for information (RFI) seeks information from the community about the availability, quality, and degree of clinical characterization of plasma and CSF samples that could potentially be used for assessing the technical performance of a panel of inflammatory markers and the utility of the panel for sub-typing individuals and tracking disease progression in individuals with mental illness.

The NIMH seeks information on the following:

1. Source and number of samples available for each disorder and for healthy controls. Include the number of plasma samples and the number of CSF samples available, and whether both plasma and CSF samples are available from the same individuals.
2. SOPs used for sample collection and storage
3. Available clinical data: diagnosis, age of onset and duration of illness, demographics, medications, co-morbidities
4. Consent for sharing of samples
5. Contact information for the individual responsible for the samples

Respondents are encouraged to include any other information that they deem relevant to the purpose of this RFI.

The NIH will use the information submitted in response to this RFI at its discretion and will not provide comments to any responder's submission. However, responses to the RFI may be reflected in future funding opportunity announcements. The information provided will be analyzed and may be aggregated in reports. Respondents are advised that the Government is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted. No proprietary, classified, confidential, or sensitive information should be included in your response. The Government reserves the right to use any non-proprietary technical information in any resultant solicitation(s).

Dated: June 16, 2016.

Shelli Avenevoli,

Acting Deputy Director, National Institute of Mental Health.

[FR Doc. 2016–14740 Filed 6–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Mechanism for Time-Sensitive Drug Abuse Research (R21).

Date: July 14, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Summer Research Education Experience Programs (R25).

Date: July 19, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, 301–435–1426, *mcguireso@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 17, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14777 Filed 6–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; NLM PEOPLE LOCATOR® System

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 15, 2016, page 22289 and allowed 60 days for public comment. There were no comments received. The purpose of this notice is to allow an additional 30 days for public comment. The National Library of Medicine (NLM), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: David Sharlip, Office of Administrative and Management Analysis Services, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll-free number (301) 402–9680, or Email your request, including your address to: *sharlipd@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: NLM People Locator System, 0925–0612, Expiration Date 07/31/2016, EXTENSION, National Library of Medicine (NLM), National Institutes of Health (NIH).

Need and Use of Information Collection: This collection of data is intended to assist in the reunification of family members and friends who are separated during a disaster. Experience in operational drills and during real-world disasters such as the January 2010 earthquakes in Haiti demonstrates that family members and loved ones are often separated during disasters and have significant difficulty determining each other's safety, condition, and location. Reunification can not only improve their emotional well-being during the recovery period, but also improve the chances that injured victims will be cared for once they are released from urgent medical care. Family and friends are also a valuable source of medical information that may be important to the care of injured victims (*e.g.*, by providing family or personal medical history, information about allergies). The National Library of Medicine (NLM) aims to assist Federal, State and Local agencies in disaster relief efforts and to serve its mission of supporting national efforts to the response to disasters via the PEOPLE LOCATOR® system and related mobile app (ReUnite™) developed as part of the intramural Lost Person Finder (LPF) R&D project. The information collection would support efforts to reunite family and friends who are separated during a disaster. Information about missing ("lost") people would be collected from family members or loved ones who are searching for them. Information about recovered ("found") people could be provided by medical personnel, volunteers and other relief workers assisting in the disaster recovery effort. Information collected about missing and recovered persons would vary including any one of the following and possibly all: A photograph, name (if available for a found person), age group (child, adult) and/or range, gender, status (alive and well, injured, deceased, unknown), and location. The information collection would be voluntary. It would be activated only during times of declared emergencies, training and demonstration support activities, and would operate in declared emergencies until relief efforts have ceased in response to a particular disaster. This data collection is authorized pursuant to sections 301, 307, 465 and 478A of the Public Health Service Act [42 U.S.C. 241, 242, 286 and 286d]. NLM has in its mission the development and coordination of communication technology to improve the delivery of health services.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 7,500.

ESTIMATED ANNUALIZED BURDEN HOURS

Types of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Emergency Care First-Responders, Physicians, Other Health Care Providers	500	100	3/60	2,500
Family members seeking a missing person	50,000	2	3/60	5,000
Total	50,500	150,000		7,500

Dated: June 16, 2016.

David Sharlip,

Project Clearance Liaison, NLM, NIH.

[FR Doc. 2016–14825 Filed 6–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Epilepsy Therapy Screening Program Review.

Date: June 23, 2016.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Tiziana Paola Cogliati, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–8223, *Tiziana.cogliati@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Parkinson's Disease Biomarker Program Discovery Projects.

Date: June 30, 2016.

Time: 8:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Joel Saydoff, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *Joel.saydoff@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Biomarkers for Lewy Body Dementias.

Date: June 30, 2016.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Joel Saydoff, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *Joel.saydoff@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R21: Rapid Assessment of Zika Virus (ZIKV) Complications.

Date: July 15, 2016.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ana Alariu, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *Ana.olariu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 17, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14778 Filed 6–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health (NIMH); Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of an Interagency Autism Coordinating Committee (IACC or Committee) meeting.

The purpose of the IACC meeting is to discuss business, agency updates, and issues related to autism spectrum disorder (ASD) research and services activities. The Committee will discuss the next update of the IACC Strategic Plan. The meeting will be open to the public and will be accessible by webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Open Meeting.

Date: July 19, 2016.

Time: 9:00 a.m. to 5:00 p.m.* Eastern Time
* Approximate end time.

Agenda: To discuss business, updates, and issues related to ASD research and services activities. The Committee will discuss the next update of the IACC Strategic Plan.

Place: National Institutes of Health, 31 Center Drive, Building 31, C Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Webcast Live: https://videocast.nih.gov/summary.asp?live=19333&bhcp=1.

Conference Call Access: Dial: 800–369–3355, Access code: 6950027.

Cost: The meeting is free and open to the public.

Registration: Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis. To register, please visit: *http://apps1.seiservices.com/IACC/.*

Deadlines: Notification of intent to present oral comments: Tuesday, July 5, 2016 by 5:00 p.m. ET. Submission of written/electronic statement for oral comments: Monday, July 11, 2016 by 5:00 p.m. ET. Submission of written comments: Monday, July 11, 2016 by 5:00 p.m. ET.

For IACC Public Comment guidelines please see: *https://iacc.hhs.gov/meetings/public-comments/guidelines/.*

Access: Medical Center Metro Station (Red Line).

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6182A, Bethesda, MD 20892–9669, Phone: 301–443–6040, Email: *IACCPublicInquiries@mail.nih.gov.*

Public Comments: Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice by 5:00 p.m. ET on Tuesday, July 5, 2016, with their request to present oral comments at the meeting. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral presentation/statement including a brief description of the organization represented by 5:00 p.m. ET on Monday, July 11, 2016. Statements submitted will become a part of the public record. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to three to five minutes per speaker, depending on the number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received, along with the required submission of the written/electronic statement by the specified deadline.

In addition, any interested person may submit written public comments to the IACC prior to the meeting by sending the comments to the Contact Person listed on this notice by 5:00 p.m. ET on Monday, July 11, 2016. The comments should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person. NIMH anticipates written public comments received by 5:00 p.m. ET on Monday, July 11, 2016 will be presented to the Committee prior to the meeting for the Committee's consideration. Any written comments received after the 5:00 p.m. ET, July 11, 2016 deadline through July 18, 2016 will be provided to the Committee either before or after the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable Federal policies. All written public comments and oral public comment statements received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record.

In the 2009 IACC Strategic Plan, the IACC listed the "Spirit of Collaboration" as one of its core values, stating that, "We will treat others with respect, listen to diverse views with open minds, discuss submitted public comments, and foster discussions where participants can comfortably offer opposing opinions." In keeping with this core value, the IACC and the NIMH Office of Autism Research Coordination (OARC) ask that members of the public who provide public comments or participate in meetings of the IACC also seek to treat others with respect and consideration in their communications and actions, even when discussing issues of genuine concern or disagreement.

Remote Access: The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the webcast or conference call, please send an email to *IACCPublicInquiries@mail.nih.gov* or call (240) 485–1998.

Individuals wishing to participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least five days prior to the meeting.

Security: In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs and hotel and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Also as a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Meeting schedule subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: June 16, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14693 Filed 6–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Cardiovascular Sciences.

Date: June 28, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, (301) 435–0904, *sara.ahlgren@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Targeting Persistent HIV Reservoirs.

Date: July 7, 2016.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Basic Research on HIV Persistence.

Date: July 7, 2016.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular and Respiratory Sciences AREA.

Date: July 12–13, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, (301) 435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Musculoskeletal, Oral and Skin Systems.

Date: July 12, 2016.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–375: Nutrigenetics and Nutrigenomics Approaches for Nutrition Research.

Date: July 12, 2016.

Time: 1:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–2514, *riverase@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Vaccines Study Section.

Date: July 13, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, (301) 435–0000, *bdey@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular Transducers of Physical Activity Chemical Analysis Sites (U24).

Date: July 14, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, (301) 379–9351, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: July 14, 2016.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–2514, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Immunology F32.

Date: July 14, 2016.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Andrea Keane-Myers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, (301)435–1221, *andrea.keane-myers@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business PAR Panel: Safe and Effective

Instruments and Devices for Use in Neonatal and Pediatric Care Settings.

Date: July 14, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–2598, *firrellj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 15, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14689 Filed 6–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Evaluation of the Enhancing Diversity of the NIH-Funded Workforce Program (NIGMS)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register**, September 28, 2015, pages 58270–58271, and allowed 60-days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of General Medical Sciences (NIGMS), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Dr. Michael Sesma, Chief, Postdoctoral Training Branch, Division of Training, Workforce Development, and Diversity, NIGMS, 45 Center Drive, Room 2AS43H, Bethesda, MD 20892, or call non-toll-free number (301) 594–3900, or Email your request, including your address to: *msesma@nigms.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Evaluation of the Enhancing the Diversity of the NIH-funded Workforce Program Consortium (DPC), 0935–NEW National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH).

Need and Use of Information Collection: The goal of the DPC is to address a unique and compelling need identified by NIH, namely to enhance the diversity of well-trained biomedical research scientists who can successfully compete for NIH research funding and/or otherwise contribute to the NIH-funded scientific workforce. The DPC is a national collaborative through which awardee institutions, in partnership with NIH, aim to enhance diversity in the biomedical research workforce through the development, implementation, assessment and dissemination of innovative and effective approaches to: (a) Student outreach, engagement, training, and mentoring, (b) faculty development, and (c) institutional research training infrastructure. The Coordination and Evaluation Center (CEC) will evaluate the efficacy of the training and mentoring approaches implemented across a variety of contexts and populations and will disseminate information to the broader research community. The planned consortium-wide data collection and evaluation will provide comprehensive information about the multi-dimensional factors (individual, institutional, and faculty/mentor) that influence student and faculty success, professional development, and persistence within biomedical research career paths across a variety of contexts. The planned data collection, and the resulting findings, is projected to have a sustained, transformative effect on biomedical research training and mentoring nationwide.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 61,950.

ESTIMATED ANNUALIZED BURDEN HOURS

A.12.1: Annualized estimate of hour burden

Type of respondents	Number of respondents	Frequency of resonse	Average time per response (in hours)	Annual hour burden
BUILD Student—Entrance Survey (Version A:HERI Freshman Survey [Attachment 8a], Version B: HERI Freshman Survey for Non-Freshman Transfers [Attachment 8b])	15,000	1	45/60	11,250
BUILD Student—Follow-up survey at the end of the first attendance year (HERI Your First College Year; Attachment 10)	15,000	1	45/60	11,250
BUILD Student—Follow-up survey at graduation (HERI College Senior Survey; Attachment 11)	15,000	1	45/60	11,250
BUILD Student Annual Follow-up Survey (Attachment 12):				
a. 2015 Cohort	5,000	3	25/60	6,250
b. 2016 Cohort	5,000	2	25/60	4,167
c. 2017 Cohort	5,000	1	25/60	2,083
BUILD Faculty Survey (HERI Faculty Survey; Attachment 13)	500	1	45/60	375
BUILD Faculty Annual Follow-up survey (Attachment 14)	500	2	25/60	417
BUILD Mentee Mentor Assessment (Attachment 15)	1,000	3	10/60	500

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

A.12.1: Annualized estimate of hour burden

Type of respondents	Number of respondents	Frequency of resonse	Average time per response (in hours)	Annual hour burden
BUILD Institutional Research & Program Data Requests (Attachment 25)	10	3	16	480
BUILD Implementation Reports (Attachment 26)	10	3	16	480
BUILD Site Visits (Attachment 23)	120	3	24	8,640
BUILD Case Studies Preparation (Attachment 23)	24	1	40	960
BUILD Case Study Interviews (Attachment 23):				
a. Undergraduate Students	170	1	90/60	255
b. Graduate/post-doctoral students	70	1	90/60	105
c. PI's, Program Managers/Directors, & Faculty	162	1	90/60	243
NRMN Mentee Annual Follow-up Surveys (Attachment 18)				
a. 2016 student cohort	375	3	25/60	469
b. 2016 faculty cohort	100	3	25/60	125
c. 2017 student cohort	375	2	25/60	313
d. 2017 faculty cohort	100	2	25/60	83
e. 2018 student cohort	375	1	25/60	156
f. 2018 faculty cohort	100	1	25/60	42
NRMN Mentor Annual Follow-up Surveys (Attachment 17):				
a. 2016 Cohort	375	3	25/60	469
b. 2017 Cohort	375	2	25/60	313
c. 2018 Cohort	375	1	25/60	156
NRMN Mentees—Program specific modules for tracking survey: Mentee Assessment of Mentor (Attachment 15), Research & Grant Writing (Attachment 20), Institutional Context (Attachment 22):				
a. 2016 student cohort	375	3	10/60	188
b. 2016 faculty cohort	100	3	10/60	50
c. 2017 student cohort	375	2	10/60	125
d. 2017 faculty cohort	100	2	10/60	33
e. 2018 student cohort	375	1	10/60	63
f. 2018 faculty cohort	100	1	10/60	17
NRMN Mentors—Program specific modules for tracking survey: Mentor Skills (Attachment 19), Coaching Training (Attachment 21), Institutional Context (Attachment 22):				
a. 2016 Cohort	375	3	10/60	188
b. 2017 Cohort	375	2	10/60	125
c. 2018 Cohort	375	1	10/60	63
NRMN site visits (Attachment 24)	1	6	16	96
NRMN Case Study Interviews (Attachment 24):				
a. Investigators	37	3	1	111
b. Mentors	30	1	1	30
c. Student mentees	15	1	1	15
d. Faculty mentees	15	1	1	15
Total	67,764	90,723	....	61,950

Dated: June 15, 2016.

Tammy Dean-Maxwell,

Project Clearance Liaison, NIGMS, NIH.

[FR Doc. 2016–14739 Filed 6–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request: NEXT Generation Health Study

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 10, 2016, page 12744, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact: Denise L. Haynie, Ph.D., MPH, Staff Scientist, Division of Population Intramural Research, 6100 Executive Blvd. Rm. 7B13, Bethesda, MD 20892, or call non-toll-free number (301) 435–6933 or Email your request, including your address to: *Denise_Haynie@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: NEXT Generation Health Study, 0925–0610, Expiration Date 04/30/2016, Reinstatement with Change, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH).

Need and Use of Information Collection: The goal of this research is to obtain data on health and health behaviors annually for seven years beginning in the 2009–2010 school-year from a national probability sample of adolescents. The transition from high school to post high school years is a critical period for changes in health risk behaviors. This information will enable the improvement of health services and programs for youth. The study will provide needed information about the health of U.S. adolescents and young adults and influences on their health.

The study has collected information on adolescent health behaviors and social and environmental contexts for these behaviors annually for six years beginning in the 2009–2010 school year. This study will collect this information in 2016, the last planned data collection. Self-report of health status, health behaviors, and health attitudes will be collected by online surveys.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1385.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response	Total annual burden hour
NEXT Annual Survey	Young Adults	2,100	1	35/60	1225
In Home Assessment	Young Adults	532	1	15/60	133
In-home Survey	Young Adults	532	1	3/60	27
Total Annual Burden Hours		2100	3164		1385

Dated: June 10, 2016.

Sarah Glavin,

Project Clearance Liaison, NICHD, NIH.

[FR Doc. 2016–14738 Filed 6–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: SAMHSA Application for Peer Grant Reviewers (OMB No. 0930–0255)—Extension

Section 501(h) of the Public Health Service (PHS) Act (42 U.S.C. 290aa) directs the Administrator of the Substance Abuse and Mental Health Services Administration (SAMHSA) to establish such peer review groups as are needed to carry out the requirements of Title V of the PHS Act. SAMHSA administers a large discretionary grants program under authorization of Title V, and, for many years, SAMHSA has funded grants to provide prevention and treatment services related to substance abuse and mental health.

In support of its grant peer review efforts, SAMHSA desires to continue to expand the number and types of reviewers it uses on these grant review committees. To accomplish that end, SAMHSA has determined that it is important to proactively seek the inclusion of new and qualified representatives on its peer review groups. Accordingly SAMHSA has developed an application form for use by individuals who wish to apply to serve as peer reviewers.

The application form has been developed to capture the essential information about the individual applicants. Although consideration was given to requesting a resume from interested individuals, it is essential to have specific information from all applicants about their qualifications. The most consistent method to accomplish this is through completion of a standard form by all interested persons which captures information about knowledge, education, and experience in a consistent manner from all interested applicants. SAMHSA will use the information provided on the applications to identify appropriate peer grant reviewers. Depending on their experience and qualifications, applicants may be invited to serve as either grant reviewers or review group chairpersons.

The following table shows the annual response burden estimate.

Number of respondents	Responses/ respondent	Burden/ responses (hours)	Total burden hours
500	1	1.5	750

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by August 22, 2016.

Summer King,

Statistician.

[FR Doc. 2016–14711 Filed 6–21–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Pretesting of Substance Abuse Prevention and Treatment and Mental Health Services Communication Messages—(OMB No. 0930–0196)—Extension

As the federal agency responsible for developing and disseminating authoritative knowledge about substance abuse prevention, addiction treatment, and mental health services and for mobilizing consumer support and increasing public understanding to overcome the stigma attached to addiction and mental illness, SAMHSA is responsible for development and dissemination of a wide range of education and information materials for both the general public and the professional communities. This submission is for generic approval and will provide for formative and qualitative evaluation activities to (1) Assess audience knowledge, attitudes, behavior and other characteristics for the planning and development of messages, communication strategies and public information programs; and (2) test these messages, strategies and program components in developmental form to assess audience comprehension, reactions, and perceptions. Information obtained from testing can then be used to improve materials and strategies while revisions are still affordable and possible. The annual burden associated with these activities is summarized below.

Activity	Number of respondents	Responses/ respondent	Hours per response	Total hours
Individual In-depth Interviews:				
General Public	400	1	.75	300
Service Providers	200	1	.75	150
Focus Group Interviews:				
General Public	3,000	1	1.5	4,500
Service Providers	1,500	1	1.5	2,250
Telephone Interviews:				
General Public	335	1	.08	27
Service Providers	165	1	.08	13
Self-Administered Questionnaires:				
General Public	2,680	1	.25	670
Service Providers	1,320	1	.25	330
Gatekeeper Reviews:				
General Public	1,200	1	.50	600
Service Providers	900	1	.50	450
Total	11,700			9,290

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by August 22, 2016.

Summer King,

Statistician.

[FR Doc. 2016–14710 Filed 6–21–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: 287(g) Candidate Questionnaire, Form No. 70–009; Extension, Without Change; Comment Request; OMB Control No. 1653–0047

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), and the estimated cost to the respondent.

DATES: Comments are encouraged and will be accepted until August 22, 2016.

ADDRESSES: Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Scott Elmore, Forms Manager, U.S. Immigrations and Customs Enforcement, 801 I Street NW., Mailstop 5800, Washington, DC 20536–5800.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved Information Collection.

(2) *Title of the Form/Collection:* 287(g) Candidate Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* 70–009, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal governments. This questionnaire is used for the purposes of determining whether or not a state or local law enforcement officer will be granted Federal immigration enforcement authority under the 287(g) program. This information is used by program managers and trainers in the 287(g) program to make a decision for a potential candidate to be admitted into the program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75 responses at 25 minutes (0.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 31 annual burden hours.

Dated: June 16, 2016.

Scott Elmore,

Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2016–14716 Filed 6–21–16; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2016–0073; FXIA16710900000–156–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before July 22, 2016.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2016–0073.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2016–0073; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). *Viewing Comments:* Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES.** Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, "Delivering an Efficient, Effective, and Accountable Government," and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

Endangered Species

Applicant: Fort Worth Zoo, Fort Worth, TX; PRT–93340B

The applicant requests a permit to import one female and one male Sumatran orangutan (*Pongo pygmaeus*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Saint Louis Zoo, St. Louis, MO; PRT–79205B

The applicant requests a permit to export one male and one female North Sulawesi babirusa (*Babyrousa celebensis*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Xochitl De La Rosa Reyna, College Station, TX; PRT–87845B

The applicant requests a permit to import biological samples from wild olive Ridley sea turtle (*Lepidochelys olivacea*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Kevin Petersen, Hyrum, UT; PRT–98525B

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016–14741 Filed 6–21–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Twenty-Nine Palms Band of Mission Indians of California Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: On June 14, 2016, the Bureau of Indian Affairs (BIA) approved the Twenty-Nine Palms Band of Mission Indians of California (Tribe) leasing regulations under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business site leases without BIA approval.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS–4642–MIB, 1849 C Street NW., Washington, DC 20240, at (202) 208–3615.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes tribes to negotiate and enter into agricultural and business leases of tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating tribes develop tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve tribal regulations if the tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the tribal regulations for the Twenty-Nine Palms Band of Mission Indians of California.

II. Federal Preemption of State and Local Taxes

The Department regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to state and local taxation and may be subject to taxation by the Indian tribe with jurisdiction. *See* 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal Government has a strong interest in promoting economic development, self-determination, and tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of state law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under tribal leasing regulations approved by the Federal Government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, preempts state and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, Section 465 preempts state taxation of rent payments by a lessee for leased trust lands, because "tax on the payment of rent is indistinguishable from an impermissible tax on the land." *See Seminole Tribe of Florida* v. *Stranburg,* No. 14–14524, *13–*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether state and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of "traditional notions of Indian self-government," requires a particularized examination of the relevant Federal, state, and tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and tribal interests against state and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to "allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities." 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford tribes "flexibility to adapt lease terms to suit [their] business and cultural needs" and to "enable [Tribes] to approve leases quickly and efficiently." *Id.* at 5–6.

Assessment of state and local taxes would obstruct these express Federal policies supporting tribal economic development and self-determination, and also threaten substantial tribal interests in effective tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that "[a] key goal of the Federal Government is to render tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding"). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a tribe that, as a result, might refrain from exercising its own sovereign right to impose a tribal tax to support its infrastructure needs. *See id.* at 2043–44 (finding that state and local taxes greatly discourage tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal Government remains involved in the tribal land leasing process by approving the tribal leasing regulations in the first instance and providing technical assistance, upon request by a tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the tribal regulations, including terminating the lease or rescinding approval of the tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the tribal regulations according to part 162 of the regulations.

Accordingly, the Federal and tribal interests weigh heavily in favor of preemption of state and local taxes on lease-related activities and interests, regardless of whether the lease is governed by tribal leasing regulations at part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Twenty-Nine Palms Band of Mission Indians of California.

Dated: June 14, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–14796 Filed 6–21–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD/AAKC001030/ A0A501010.999900]

HEARTH Act Approval of Oneida Nation of New York Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: On June 14, 2016, the Bureau of Indian Affairs (BIA) approved the Oneida Nation of New York (Tribe) leasing regulations under the HEARTH Act. With this approval, the Tribe is authorized to enter into residential leases without BIA approval.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS–4642–MIB, 1849 C Street NW., Washington, DC 20240, telephone: (202) 208–3615.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH (Helping Expedite and Advance Responsible Tribal Homeownership) Act of 2012 (Act) makes a voluntary, alternative land leasing process available to tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The Act authorizes tribes to negotiate and enter into agricultural and business leases of tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (the Secretary). The Act also authorizes tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating tribes develop tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The Act requires the Secretary to approve tribal regulations if the tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the Act. This notice announces that the Secretary, through the Assistant

Secretary—Indian Affairs, has approved the tribal regulations for the Oneida Nation of New York.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to state and local taxation and may be subject to taxation by the Indian tribe with jurisdiction. *See* 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal Government has a strong interest in promoting economic development, self-determination, and tribal sovereignty. 77 FR 72,440, 72,447–48 (December 5, 2012). The principles supporting the Federal preemption of state law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under tribal leasing regulations approved by the Federal Government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, preempts state and local taxation of permanent improvements on trust land. *See Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 465 preempts state taxation of rent payments by a lessee for leased trust lands, because "tax on the payment of rent is indistinguishable from an impermissible tax on the land." *See Seminole Tribe of Florida* v. *Stranburg,* No. 14–14524, *13–*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether state and local taxation of non-Indians on the reservation is preempted. *See White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of "traditional notions of Indian self-government," requires a particularized examination of the relevant Federal, state, and tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72,447–48, as supplemented by the analysis below.

The strong Federal and tribal interests against state and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to "allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities." 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford tribes "flexibility to adapt lease terms to suit [their] business and cultural needs" and to "enable [Tribes] to approve leases quickly and efficiently." *Id.* at 5–6.

Assessment of state and local taxes would obstruct these express Federal policies supporting tribal economic development and self-determination, and also threaten substantial tribal interests in effective tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that "[a] key goal of the Federal Government is to render tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding"). The additional costs of state and local taxation have a chilling effect on potential lessees, as well as on a tribe that, as a result, might refrain from exercising its own sovereign right to impose a tribal tax to support its infrastructure needs. *See id.* at 2043–44 (finding that state and local taxes greatly discourage tribes from raising tax revenue from the same sources because the imposition of double taxation would impede tribal economic growth).

Similar to BIA's surface leasing regulations, tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal Government remains involved in the tribal land leasing process by approving the tribal leasing regulations in the first instance and providing technical assistance, upon request by a tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the tribal regulations, including terminating the lease or rescinding approval of the tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the tribal regulations according to the part 162 regulations.

Accordingly, the Federal and tribal interests weigh heavily in favor of preemption of state and local taxes on lease-related activities and interests, regardless of whether the lease is governed by tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Oneida Nation of New York.

Dated: June 14, 2016.

Ann Marie Bledsoe Downes,

Deputy Assistant Secretary—Policy and Economic Development.

[FR Doc. 2016–14798 Filed 6–21–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Proclaiming Certain Lands as Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 128.30 acres, more or less, an addition to the Reservation of the Shakopee Mdewakanton Sioux Community of Minnesota on June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS–4642–MIB, 1849 C Street NW., Washington, DC 20240, telephone: (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), for the land described below. The land was proclaimed to be Shakopee Mdewakanton Sioux Community Reservation for the exclusive use of Indians on that Reservation who are entitled to reside at the Reservation by enrollment or tribal membership.

Reservation of the Shakopee Mdewakanton Sioux Community, Township of Shakopee, County of Scott, and State of Minnesota

Shutrop

Legal Description Containing 128.30 Acres More or Less

The West Half of the Southeast Quarter and Government Lot 3, all in Section 15, Township 115 North, Range 22 West, of the 5th Principal Meridian, Scott County, Minnesota.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities, railroads or pipelines, and any other rights-of-way or reservations of record.

Dated: June 8, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–14797 Filed 6–21–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[16XD4523WS\DS10100000\DWSN00000.000000\DP10020]

Statement of Findings: Crow Tribe Water Rights Settlement Act of 2010

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior is publishing this notice as required by section 410(e) of the Crow Tribe Water Rights Settlement Act of 2010 (Settlement Act). Congress enacted the Settlement Act as Title IV of the Claims Resolution Act of 2010 (Pub. L. 111–291). The publication of this notice causes certain waivers and releases of claims to become effective as required by the Settlement Act.

DATES: This notice is effective June 22, 2016.

FOR FURTHER INFORMATION CONTACT: Address all comments and requests for additional information to Douglas Davis, Chair, Crow Water Rights Settlement Implementation Team, Department of the Interior, Bureau of Reclamation, Great Plains Region, P.O. Box 36900 (GP–1230), Billings, MT 59107, (406) 247–7710.

SUPPLEMENTARY INFORMATION: The Settlement Act was enacted to resolve the water rights claims of the Crow Tribe (Tribe) in the State of Montana (State). The Tribe and the State negotiated the Crow Tribe-Montana Water Compact (Mont. Code. Ann. 85–20–901) (Compact) prior to enactment of the Settlement Act. As described in section 402 of the Settlement Act, the purposes of the Settlement Act are:

(1) To achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana for the Crow Tribe and for the United States for the benefit of the Tribe and allottees;

(2) to authorize, ratify, and confirm the Compact;

(3) to authorize and direct the Secretary of the Interior (Secretary) to execute the Compact and to take any other action necessary to carry out the Compact in accordance with the Settlement Act; and

(4) to ensure the availability of funds necessary for the implementation of the Compact and the Settlement Act.

Section 415 of the Settlement Act provided for repeal of the Settlement Act and other consequences if certain conditions were not fulfilled on or before March 31, 2016, or by an extended date agreed to by the Tribe and the Secretary after reasonable notice to the State, whichever is later. On March 21, 2016, after providing reasonable notice to the State, the Secretary and the Tribe agreed to extend the deadline for publication to June 30, 2016.

Statement of Findings

In accordance with section 410(e) of the Settlement Act, I find as follows:

1. The Montana Water Court has issued a final judgment and decree approving the Compact;
2. all of the funds made available under subsections (c) through (f) of section 414 of the Settlement Act have been deposited in the Crow Settlement Fund;
3. the Secretary has executed the agreements with the Tribe required by sections 405(a) and 406(a) of the Settlement Act;
4. the State has appropriated and paid into an interest-bearing escrow account any payments due as of the date of enactment of the Settlement Act to the Tribe under the Compact;
5. the Tribe has ratified the Compact by submitting the Settlement Act and the Compact to a vote by the tribal membership for approval or disapproval and the tribal membership voted to approve the Settlement Act and the Compact by a majority of votes cast on the day of the vote, as certified by the Secretary and the Tribe;
6. the Secretary has fulfilled the requirements of section 408(a) of the Settlement Act; and
7. the waivers and releases authorized and set forth in section 410(a) of the Settlement Act have been executed by the Tribe and the Secretary.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2016–14699 Filed 6–21–16; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; New Collection; National Evaluation of Round 4 of the Trade Adjustment Assistance Community College Career Training (TAACCCT) Grants Program

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed Information Collection Request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 22, 2016.

ADDRESSES: You may submit comments by either one of the following methods:

Email: ChiefEvaluationOffice@dol.gov;

Mail or Courier: Molly Irwin and Janet Javar, Chief Evaluation Office, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified below for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Molly Irwin and Janet Javar by email at *ChiefEvaluationOffice@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. *Background:* The fourth round of the Trade Adjustment Assistance Community College Career Training (TAACCCT) grants program continues to provide community colleges and other eligible institutions of higher education with funds to expand and improve their ability to deliver education and career training programs that can be completed in two years or less and are suited for workers who are eligible for training under the Trade Adjustment Assistance for Workers program and other adults in need of new or upgraded skills. The evaluation of Round 4 funded by the Department of Labor will include an outcomes study, an implementation analysis, and a study of employer relationships.

This **Federal Register** Notice provides the opportunity to comment on a proposed new information collection activity for the TAACCCT Round 4 National Evaluation: (1) Collecting updated participant contact information, (2) conducting a follow-up survey of participants enrolled in programs in the Round 4 grantees selected for the outcomes study, (3) surveying staff in all colleges that are part of a Round 4 grant, and (4) interviewing staff from employers that have partnered with Round 4 grantees.

The purposes of the outcomes study are to capture participants' training experiences while in their programs, receipt of job search assistance as they near program completion, and employment and wage outcomes upon program exit and, for shorter programs, several months thereafter. The employer study will seek to understand how DOL can encourage the workforce system to build productive and sustainable employer relationships through Workforce Innovation and Opportunity Act implementation and its grants programs.

II. *Desired Focus of Comments:* Currently, the Department of Labor is soliciting comments concerning the above data collection for the national evaluation of Round 4 of the TAACCCT grants program. Comments are requested to:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* At this time, the Department of Labor is requesting clearance for data collection for the national evaluation of Round 4 of the TAACCCT grants program via collection of updated participant contact information, survey data on participants and colleges, and employer discussions.

Type of review: New information collection request.

OMB Control Number: 1205–0NEW.

Affected Public: Participants enrolled in selected TAACCCT grant programs; staff associated with implementing TAACCCT grant programs, employers working with TAACCCT grantees.

ESTIMATED BURDEN HOURS

Form/activity	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average time per response (hours)	Total burden hours	Annual burden hours
Participant Follow-up Survey	*4,000	1,333	1	.33	1,320	440
Updates to Participant Contact information	5,000	1,667	4	0.083	1,660	553
College Survey	272	91	1	1.5	408	137
Employer Interviews	136	45	1	1.5	204	68
Totals	9,408	4,704			3,592	1,197

*Assumes a sample of 5,000 with an 80 percent response rate.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval; they will also become a matter of public record.

Signed at Washington, DC, this 6th day of June 2016.

Sharon Block,

Principal Deputy Assistant Secretary for Policy, U.S. Department of Labor.

[FR Doc. 2016–14819 Filed 6–21–16; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Collection of Information; Comment Request

AGENCY: Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Authorization Request form and Certification/Letter of Medical Necessity for Compounded Drugs (CA–26) and Authorization Request form and Certification/Letter of Medical Necessity for Opioid Medications (CA–27). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 22, 2016.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3323, Washington, DC 20210, telephone/fax (202) 354–9647, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor (DOL) is requesting an approval of a new information collection. This information collection is essential to the mission of DOL and the Office of Workers' Compensation Programs (OWCP), to monitor and assure the appropriate use of opioids and compounded drugs in treating employment-related injuries under the Federal Employees Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*

The FECA statute grants OWCP discretion to provide an injured employee the "services, appliances, and supplies prescribed or recommended by a qualified physician" which OWCP considers "likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation." 5 U.S.C. 8103. In other words, OWCP is mandated to provide medical supplies and services—including prescription drugs such as opioids and compounded drugs—that it considers medically necessary. 20 CFR 10.310. The FECA statute and implementing regulations are not primarily focused on managing doctor/patient decisions relating to medication therapy and, with the exception of few limitations on fentanyl (an opioid) and other controlled substances, the FECA program policy on pharmacy benefits has generally been a policy of payment for prescribed medications in accordance with a fee schedule based on a percentage of the average wholesale price (AWP) for drugs identified by a National Drug Code (NDC). See 20 CFR 10.809. The FECA program does not currently have any limitations on payment for opioids generally or for compounded drugs. The FECA program is establishing a prior authorization policy for opioid and compounded drugs (at this time after first fill) utilizing the pre-authorization authority already contained in its regulations at 20 CFR 10.310(a) and § 10.800(b). In requiring the use of these forms for opioid and compounded drugs, OWCP is implementing a prior-authorization process based on medical necessity.

The forms, Authorization Request Form and Certification/Letter of Medical Necessity for Compounded Drugs (CA–26) and Authorization Request Form and Certification/Letter of Medical Necessity Certification/Letter of Medical Necessity for Opioid Medications (CA–27), require an injured worker's treating physician to answer a number of questions about the prescribed opioids and/or compounded drugs and certify that they are medically necessary to treat the work-related injury. The responses to the questions on the forms are intended to ensure that treating physicians have considered non-opioid and non-compounded drug alternatives, and are only prescribing the most cost effective and medically necessary drugs. The forms will also permit OWCP to more easily track the volume, type, and characteristics of opioids and compounded drugs authorized by the FECA program. The forms will serve as a means for injured workers to continue receiving opioids and compounded drugs only where medically necessary and simultaneously give OWCP greater oversight in monitoring their appropriate use and gather additional data about their use.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of this new information collection in order to carry out its responsibility to meet the statutory requirements of the Federal Employees' Compensation Act.

Agency: Office of Workers' Compensation Programs.

Type of Review: New Collection (Request for New OMB control Number).

Title: Authorization and Certification/Letter of Medical Necessity.

OMB Number: 1240–0NEW.

Agency Number: CA–26 and CA–27.

Affected Public: Individuals or households; Businesses or other for-profit.

Total Respondents: 80,000.

Total Annual Responses: 65,600.

Estimated Total Burden Hours: 40,000.

Estimated Time per Response: 30 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 16, 2016.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2016–14818 Filed 6–21–16; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health: Subcommittee on Medical Advice re: Weighing Medical Evidence

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Announcement of meeting of the Subcommittee on Medical Advice re: Weighing Medical Evidence of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational

Illness Compensation Program Act (EEOICPA).

SUMMARY: The subcommittee will meet via teleconference on July 12, 2016, from 1:00 p.m. to 4:00 p.m. Eastern Time.

For Press Inquiries Contact: For press inquiries: Ms. Amanda McClure, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–4672; email *mcclure.amanda.c@dol.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; and (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency. The Advisory Board sunsets on December 19, 2019. This subcommittee is being assembled to gather data and begin working on advice under Area #2, Medical Advice re: Weighing Medical Evidence.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Subcommittee on Medical Advice re: Weighing Medical Evidence meeting includes:

- Defining the issues and scope of the subcommittee's topic area: medical advice to claims examiners re: weighing medical evidence;
- Defining data and informational needs (and review) for the topic area;
- Drafting the initial work plan with a timetable.

OWCP transcribes Advisory Board subcommittee meetings. OWCP posts the transcripts on the Advisory Board Web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments and other materials submitted to the subcommittee or presented at subcommittee meetings.

Public Participation, Submissions, and Access to the Public Record

Subcommittee meeting: The subcommittee will meet via teleconference on Tuesday, July 12, 2016, from 1:00 p.m. to 4:00 p.m. Eastern Time. Advisory Board subcommittee meetings are open to the public. The teleconference number and other details for listening to the meeting will be posted on the Advisory Board's Web site no later than 72 hours prior to the meeting. This information will be posted at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

Requests for special accommodations: Please submit requests for special accommodations to participate in the subcommittee meeting by email, telephone, or hard copy to Ms. Carrie Rhoads, OWCP, Room S–3524, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 343–5580; email *EnergyAdvisoryBoard@dol.gov.*

Submission of written comments for the record: You may submit written comments, identified by the subcommittee name and the meeting date of July 12, 2016, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, "Subcommittee on Medical Advice re: Weighing Medical Evidence").
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW., Washington, DC 20210. Due to security-related procedures, receipt of submissions by regular mail may experience significant delays.

Comments must be received by July 5, 2016. OWCP will make available publically, without change, any written comments, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on the Advisory Board's Web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

FOR FURTHER INFORMATION CONTACT: You may contact Antonio Rios, Designated Federal Officer, at *rios.antonio@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW., Suite S–3524, Washington, DC 20210, telephone (202) 343–5580.

This is not a toll-free number.

Signed at Washington, DC, this 17 day of June 2016.

Leonard J. Howie III,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2016–14822 Filed 6–21–16; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health: Subcommittee on the Site Exposure Matrices (SEM)

AGENCY: Office of Workers' Compensation Programs, Department of Labor.

ACTION: Announcement of meeting of the Subcommittee on the Site Exposure Matrices of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

SUMMARY: The subcommittee will meet via teleconference on July 11, 2016, from 1:00 p.m. to 3:00 p.m. Eastern Time.

For Press Inquiries Contact: For press inquiries: Ms. Amanda McClure, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–4672; email *mcclure.amanda.c@dol.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; and (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency. The Advisory Board sunsets on December 19, 2019. This subcommittee is being assembled to gather data and begin working on advice under Area #1, the Site Exposure Matrices.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Subcommittee on the Site Exposure Matrices meeting includes:

- Defining the issues and scope of the subcommittee's topic area: The Site Exposure Matrices (SEM) of the Department of Labor;
- Defining data and informational needs (and review) for the topic area;
- Drafting the initial work plan with a timetable.

OWCP transcribes Advisory Board subcommittee meetings. OWCP posts the transcripts on the Advisory Board Web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments and other materials submitted to the subcommittee or presented at subcommittee meetings.

Public Participation, Submissions, and Access to the Public Record

Subcommittee meeting: The subcommittee will meet via teleconference on Monday, July 11, 2016, from 1:00 p.m. to 3:00 p.m. Eastern Time. Advisory Board subcommittee meetings are open to the public. The teleconference number and other details for listening to the meeting will be posted on the Advisory Board's Web site no later than 72 hours prior to the meeting. This information will be posted at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

Requests for special accommodations: Please submit requests for special accommodations to participate in the subcommittee meeting by email, telephone, or hard copy to Ms. Carrie Rhoads, OWCP, Room S–3524, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 343–5580; email *EnergyAdvisoryBoard@dol.gov.*

Submission of written comments for the record: You may submit written comments, identified by the subcommittee name and the meeting date of July 11, 2016, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, "Subcommittee on the Site Exposure Matrices").
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW., Washington, DC 20210. Due to security-related procedures, receipt of submissions by regular mail may experience significant delays.

Comments must be received by July 5, 2016. OWCP will make available publically, without change, any written comments, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on the Advisory Board's Web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

FOR FURTHER INFORMATION CONTACT: You may contact Antonio Rios, Designated Federal Officer, at *rios.antonio@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW., Suite S–3524, Washington, DC 20210, telephone (202) 343–5580. This is not a toll-free number.

Signed at Washington, DC, this 17th day of June, 2016.

Leonard J. Howie III,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2016–14820 Filed 6–21–16; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–043)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, July 21, 2016, 10:15 a.m. to 11:30 a.m., Local Time.

ADDRESSES: NASA Headquarters, Room 9H40, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Aerospace Safety Advisory Panel Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–4452 or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel (ASAP) will hold its Third Quarterly Meeting for 2016. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

—Updates on the Exploration Systems Development

—Updates on the Commercial Crew Program

—Updates on the International Space Station Program

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. This meeting is also available telephonically. Any interested person may call the USA toll free conference call number 877–918–6321; pass code 1242097. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID before receiving access to NASA Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the "List of the Acceptable Documents" on Form I–9]. Non-compliant states/territories are: American Samoa, Illinois, Minnesota, Missouri, New Mexico and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ms. Marian Norris via email at *mnorris@nasa.gov.* To expedite admittance, U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days prior to the meeting to Ms. Marian Norris via email at *mnorris@nasa.gov.* It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–14805 Filed 6–21–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for International Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: Advisory Committee for International Science and Engineering (#25104).

DATE & TIME:

July 28, 2016; 8:00 a.m. to 5:15 p.m.
July 29, 2016; 9:00 a.m. to 12:30 p.m.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Stafford II, Suite 1155, Arlington, Virginia 22230.

To facilitate entry into the building, contact Diane Drew (*ddrew@nsf.gov*). Your request should be received on or prior to July 26, 2016.

TYPE OF MEETING: OPEN.

CONTACT PERSON: Rebecca Keiser, Head, Office of International Science and Engineering, National Science Foundation, 4201 Wilson Boulevard, Stafford II, Suite 1155, Arlington, Virginia 22230; 703–292–7727.

PURPOSE OF MEETING: To provide advice and recommendations concerning support for research, education and related activities involving the U.S. science and engineering community working in a global context as well as strategic efforts to promote a more effective NSF role in international science and engineering.

Agenda

Thursday, July 28, 2016

Welcome and Opening Remarks
Minutes from January 2016 meeting
FACA Briefing
International Science and Engineering Update (OISE)
Committee and Subcommittee Planning
International Strategy for NSF Big Ideas
NSF Engagement with Africa

Friday, July 29, 2016

Council of Graduate Schools Report on Evaluating International Research Experiences for Graduate Students
Subcommittee Planning (continued)
Closing Remarks and Wrap Up

A final detailed agenda may be obtained at the OISE Web site at *http://www.nsf.gov/od/oise/advisory.jsp.*

Dated: June 16, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–14659 Filed 6–21–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0282]

Information Collection: NRC Forms 542 and 542A, Uniform Low-Level Radioactive Waste Manifest Index and Regional Compact Tabulation, and Continuation Page

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, "NRC Forms 542 and 542A, Uniform Low-Level Radioactive Waste Manifest Index and Regional Compact Tabulation, and Continuation Page."

DATES: Submit comments by August 22, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0282. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0282 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0282. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0282 on this Web site.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by assessing ADAMS Accession No. ML16028A440. The supporting statement is available in ADAMS under Accession No. ML16028A442.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–

2084; email: *INFOCOLLECTS.Resource@nrc.gov*.

B. Submitting Comments

Please include Docket ID NRC–2015–0282 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information. If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request shouldstate that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Forms 542 and 542A, "Uniform Low-Level Radioactive Waste Manifest, Index and Regional Compact Tabulation, and Continuation Page."

2. *OMB approval number:* 3150–0165.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Forms 542 and 542A.

5. *How often the collection is required or requested:* Forms are used by shippers whenever radioactive waste is shipped. Quarterly or less frequent reporting is made to Agreement States depending on specific license conditions. No reporting is made to the NRC.

6. *Who will be required or asked to respond:* All NRC or Agreement State low-level waste facilities licensed pursuant to Part 61 of Title 10 of the *Code of Federal Regulations* (10 CFR) or equivalent Agreement State regulations. All generators, collectors, and processors of low-level waste intended for disposal at a low-level waste facility must complete the appropriate forms.

7. *The estimated number of annual responses:* 756.

8. *The estimated number of annual respondents:* 22.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 567.

10. *Abstract:* NRC Forms 542 and 542A, provide a set of standardized forms to meet Department of Transportation (DOT), NRC, and State requirements. The forms were developed by NRC at the request of low-level waste industry groups. The forms provide uniformity and efficiency in the collection of information contained in manifests which are required to control transfers of low-level radioactive waste intended for disposal at a land disposal facility. The NRC Form 542, completed by waste collectors or processors, contains information which facilitates tracking the identity of the waste generator. That tracking becomes more complicated when the waste forms, dimensions, or packaging are changed by the waste processor. Each container of waste shipped from a waste processor may contain waste from several different generators. The information provided on the NRC Form 542 permits the States and Compacts to know the original generators of low-level waste, as authorized by the Low-Level Radioactive Waste Policy Amendments Act of 1985, so they can ensure that waste is disposed of in the appropriate Compact.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 16th day of June 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–14702 Filed 6–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Future Plant Designs; Notice of Meeting

The ACRS Subcommittee on Future Plant Designs will hold a meeting on July 6, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed pursuant to 5 U.S.C. 552b(c)(4) and 5 U.S.C. 552b(c)(9)(b). The agenda for the subject meeting shall be as follows:

Wednesday, July 6, 2016–8:30 a.m. Until 12:00 p.m.

The Subcommittee will discuss Advanced Reactor Design Criteria and other topics of interest. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mike Snodderly (Telephone 301–415–2241 or Email: *Michael.Snodderly@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015, (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: June 16, 2016.

Michael Snodderly,

Acting Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–14790 Filed 6–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0283]

Information Collection: NRC Forms 541 and 541A, Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description, and Continuation Page

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, "NRC Forms 541 and 541A, Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description, and Continuation Page."

DATES: Submit comments by August 22, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site*: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0283. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to*: David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0283 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site*: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0283. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0283.
- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML16028A428. The supporting statement is available in ADAMS under Accession No. ML16028A431.
- *NRC's PDR*: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer*: A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2015–0283 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Forms 541 and 541A, Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description, and Continuation Page.
2. *OMB approval number:* 3150–0166.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Forms 541 and 541A.
5. *How often the collection is required or requested:* Forms are used by shippers whenever radioactive waste is shipped. Quarterly or less frequent reporting is made to Agreement States depending on specific license conditions. No reporting is made to the NRC.
6. *Who will be required or asked to respond:* All NRC or Agreement State low-level waste facilities licensed pursuant to Part 61 of Title 10 of the *Code of Federal Regulations* (10 CFR) or equivalent Agreement State regulations. All generators, collectors, and

processors of low-level waste intended for disposal at a low-level waste facility must complete the appropriate forms.

7. *The estimated number of annual responses:* 5,600.

8. *The estimated number of annual respondents:* 220.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 18,480.

10. *Abstract:* NRC Forms 541 and 541A provide a set of standardized forms to meet U.S. Department of Transportation (DOT), NRC, and State requirements. The forms were developed by NRC at the request of low-level waste industry groups. The forms provide uniformity and efficiency in the collection of information contained in manifests which are required to control transfers of low-level radioactive waste intended for disposal at a land disposal facility. The NRC Form 541 contains information needed by disposal site facilities to safely dispose of low-level waste and information to meet NRC and State requirements regulating these activities.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 16th day of June 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–14700 Filed 6–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0281]

Information Collection: NRC Forms 540 and 540A, Uniform Low-Level Radioactive Waste Manifest (Shipping Paper) and Continuation Page

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, "NRC Forms 540 and 540A, Uniform Low-Level Radioactive Waste Manifest (Shipping Paper) and Continuation Page."

DATES: Submit comments by August 22, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0281. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0281 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0281. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID: NRC–2015–0281 on this Web site.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select *"ADAMS Public Documents"* and then select *"Begin Web-based ADAMS Search."* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML16028A415. The supporting statement is available in ADAMS under Accession No. ML16028A422.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov*.

B. Submitting Comments

Please include Docket ID NRC–2015–0281 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* "NRC Forms 540 and 540A, "Uniform Low-Level Radioactive Waste Manifest (Shipping Paper) and Continuation Page."

2. *OMB approval number:* 3150–0164.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Forms 540 and 540A.

5. *How often the collection is required or requested:* Forms are used by shippers whenever radioactive waste is shipped. Quarterly or less frequent reporting is made to Agreement States depending on specific license conditions. No reporting is made to the NRC.

6. *Who will be required or asked to respond:* All NRC or Agreement State low-level waste facilities licensed pursuant to Part 61 of Title 10 of the *Code of Federal Regulations* (10 CFR) or equivalent Agreement State regulations. All generators, collectors, and processors of low-level waste intended for disposal at a low-level waste facility must complete the appropriate forms.

7. *The estimated number of annual responses:* 5,740.

8. *The estimated number of annual respondents:* 220.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 4,305.

10. *Abstract:* NRC Forms 540 and 540A provide a set of standardized forms to meet Department of Transportation (DOT), NRC, and State requirements. The forms were developed by NRC at the request of low-level waste industry groups. The forms provide uniformity and efficiency in the collection of information contained in manifests which are required to control transfers of low-level radioactive waste intended for disposal at a land disposal facility. The NRC Form 540 contains information needed to satisfy DOT shipping paper requirements in 49 CFR part 172, and the waste tracking requirements of the NRC in 10 CFR part 20.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 16th day of June 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–14701 Filed 6–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on July 6–8, 2016, 11545 Rockville Pike, Rockville, Maryland.

Wednesday, July 6, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

1:00 p.m.–1:05 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:05 p.m.–4:00 p.m.: LaSalle License Renewal (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Exelon regarding the safety evaluation related to the LaSalle license renewal application.

4:00 p.m.–5:00 p.m.: Preparation for October Meeting with Commission (Open)—The Committee will discuss and select of topics of mutual interest between the ACRS and the Commission.

5:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Thursday, July 7, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Review of Draft Final Regulatory Guide RG 1.230 and Draft NUREG–2163 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding RG 1.230, "Regulatory Guidance on the Alternate Pressurized Thermal Shock Rule" and Draft NUREG–2163, "Technical Basis for Regulatory Guidance on the Alternate Pressurized Thermal Shock Rule."

10:45 a.m.–12:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

1:00 p.m.–4:00 p.m.: Review of WCAP–16996P, "Realistic LOCA Evaluation Methodology Applied to the Full Spectrum of Break Sizes (FULL SPECTRUM LOCA METHODOLOGY)" (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Westinghouse regarding best estimate full spectrum loss of coolant accident (LOCA) methodology. [**Note:** A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]

4:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. [**Note:** A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]

Friday, July 8, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–5:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports discussed during this meeting. The Committee will discuss proposed ACRS reports on matters discussed during this meeting. [**Note:** A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]

5:30 a.m.–6:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 16th day of June 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016–14792 Filed 6–21–16; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0099, Initial Certification of Full-Time School Attendance, RI 25–41

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on the reinstatement of an expired information collection without change (ICR) 3206–0099, Initial Certification of Full-Time School Attendance. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on March 8, 2016 *(Volume 81, No. 45, Page 12147)* allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until July 22, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 25–41, Initial Certification of Full-Time School Attendance, is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity benefits to children who are age 18 or older.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Initial Certification of Full-Time School Attendance.

OMB Number: 3206–0099.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1,200.

Estimated Time per Respondent: 90 minutes.

Total Burden Hours: 1,800.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–14772 Filed 6–21–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0254, Request for Case Review for Enhanced Disability Annuity Benefit, RI 20–123

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0254, Request for Case Review for Enhanced Disability Annuity Benefit, RI 20–123. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until August 22, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Retirement Services, 1900 E Street NW., Washington, DC 20415–0001, Attention: Alberta Butler, Room 2347–E or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Retirement Services Publications Team, 1900 E Street NW., Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 20–123 is available only on the OPM Web site. It is used by retirees separated for disability and the survivors of retirees separated for disability to request that Retirement Operations review the computations of disability annuities to include the formulae provided in law for individuals who performed service as law enforcement officers, firefighters, nuclear materials carriers, air traffic controllers, Congressional employees, and Capitol and Supreme Court police.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Request for Case Review for Enhanced Disability Annuity Benefit.

OMB Number: 3206–0254.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 720.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 60.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–14779 Filed 6–21–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0034, Annuitant's Report of Earned Income, (RI 30–2)

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on the reinstatement of an expired information collection with change (ICR) 3206–00034, Annuitant's Report of Earned Income, RI 30–2. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. This information collection was previously published in the **Federal Register** on March 8, 2016 (Vol. 81, No. 45, Page 12147) allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until July 22, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

RI 30–2, Annuitant's Report of Earned Income, is used annually to determine if disability retirees under age 60 have earned income which will result in the termination of their annuity benefits under title 5, U.S.C. Sections 8337 and 8455. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Annuitant's Report of Earned Income.

OMB Number: 3206–0034.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 21,000.

Estimated Time per Respondent: 35 minutes.

Total Burden Hours: 12,250 hours.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–14781 Filed 6–21–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Request to Disability Annuitant for Information on Physical Condition and Employment, (RI 30–1), 3206–0143

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0143, Request to Disability Annuitant for Information on Physical Conditions and Employment, RI 30–1. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. This information collection was previously published in the **Federal Register** on April 20, 2016 (Vol. 81, No. 76, Page 23332) allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until July 22, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

RI 30–1 is used by persons who are not yet age 60 and who are receiving a disability annuity and are subject to inquiry regarding their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Request to Disability Annuitant for Information on Physical Condition and Employment.

OMB Number: 3206–0143.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 8,000.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 8,000 hours.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–14776 Filed 6–21–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0138, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30–9

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on the reinstatement of an expired information collection request (ICR) 3206–0138 without change, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30–9. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. This information collection was previously published in the **Federal Register** on March 8, 2016 *(Vol. 81, No. 45, Page 12146)* allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until July 22, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

RI 30–9 informs former disability annuitants of their right to request restoration under title 5, U.S.C. Sections 8337 and 8455. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity.

OMB Number: 3206–0138.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 200.

Estimated Time Per Respondent: 60 minutes.

Total Burden Hours: 200.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–14774 Filed 6–21–16; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2016–210; CP2016–211; CP2016–212; CP2016–213]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 23, 2016 (Comment due date applies to all Docket Nos. listed above).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service has filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–210; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 15, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30–.35; *Public Representative:* Lyudmila Y. Bzhilyanskaya; *Comments Due:* June 23, 2016.

2. *Docket No(s).:* CP2016–211; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 15, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30–.35; *Public Representative:* Lyudmila Y. Bzhilyanskaya; *Comments Due:* June 23, 2016.

3. *Docket No(s).:* CP2016–212; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 15, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30–.35; *Public Representative:* Lyudmila Y.

Bzhilyanskaya; *Comments Due:* June 23, 2016.

4. *Docket No(s).:* CP2016–213; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 15, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30–.35; *Public Representative:* Lyudmila Y. Bzhilyanskaya; *Comments Due:* June 23, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–14709 Filed 6–21–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78091; File No. SR–Phlx–2016–41]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Clarifying Amendments to and Remove Obsolete Language From Rules 1053 and 1056

June 16, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make clarifying amendments to and remove obsolete language from Exchange Rules 1053, Filing of Trade Information, and 1056, Maintaining Office and Filing Signatures, relating to clearing of Exchange options transactions.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make minor amendments to Rules 1053 and Rule 1056 relating to options clearing responsibilities of members. The changes are intended to update and improve readability of the rules by deleting archaic and internally inconsistent provisions.

Phlx Rule 1053 currently provides that member organizations which are clearing members are responsible for supplying, "at the time of execution" certain trade information to the Exchange covering each Exchange options transactions "effected during said business day" for which such clearing member is responsible.[3] The Exchange is deleting the phrase "effected during said business day" because the word "said" has no antecedent in the rule and is therefore meaningless. As written the sentence is therefore awkward and illogical. The phrase being deleted adds nothing to the rule and stands in the way of comprehension of the rule's meaning.

The Exchange is also deleting obsolete language following clause (x) in Rule 1053 which requires the clearing member to supply to the Exchange information as to whether a certificate will be surrendered if the transaction is a closing writing transaction. The deleted text is replaced with the word "Reserved". At one time, the By-Laws and the Rules of The Options Clearing Corporation ("OCC") provided for the issuance of physical certificates in respect of options contracts at the request of OCC participants. Certificates could be issued in respect of any option contract included in a long position in a customer's account to evidence a clearing member's position as the holder of one or more options of a specified type (put or call) in a specified options series. The certificate was nonnegotiable and conferred no separate legal rights on the holder. Certificated options contracts could only be exercised or closed out upon the surrender of the physical certificate. Until the certificate was surrendered, any attempt by a clearing member to write a closing options transaction with respect to a corresponding long certificated options position was considered by OCC to be an opening transaction subject to OCC's margin requirements on short positions. In 1982, OCC eliminated all provisions in its By-Laws and Rules providing for, or referring to certificates, after concluding that certificates were unnecessary and imposed administrative burdens and costs on OCC and on clearing members.[4] Because OCC no longer issues these certificates, Phlx Rule 1053(x) is obsolete.

Phlx Rule 1056 currently requires clearing members to maintain an office at a location approved by the Exchange for the purpose of comparing Exchange options transactions.[5] The Exchange is deleting the Exchange approval requirement because it has determined that the location of the clearing member's office is of no importance to the Exchange. The Exchange is also deleting the last sentence of the rule which requires that each member organization shall file with the Exchange a certified list of signatures of its representatives who are authorized to sign instruments and transact all business necessary for conducting comparison of Exchange options transactions. Although certain Exchange forms and procedures continue to require manual signatures, the Exchange does not believe the burdens of constantly updating the list of certified signatures is justified by any marginal benefit such a list may provide to Exchange staff who are not in any case handwriting experts trained to ascertain the validity of signatures.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 1053 provides that "[a]t the time of execution, each member organization which is a clearing member of the Options Clearing Corporation shall be responsible for supplying to the Exchange trade information in a form prescribed by the Exchange, covering each Exchange options transaction effected during said business day for which such clearing member is responsible. The trade information shall show for each transaction (i) the identity of the purchasing clearing member and the writing clearing member given up at the time of execution, (ii) the underlying stock, Exchange-Traded Fund Share or foreign currency, as the case may be, (iii) the exercise price, (iv) the expiration month, (v) the number of option contracts, (vi) the premium per share of the underlying stock or the premium per unit of the underlying foreign currency, (vii) whether a purchase or a writing transaction, (viii) except for a transaction in a specialist's account, whether an opening or closing, (ix) the identity of the account of the clearing member in which the transaction was effected, (x) if a closing writing transaction, whether a certificate will be surrendered, (xi) whether a put or call, and (xii) such other information as may be required by the Exchange. Each member or member organization which is a clearing member of the Options Clearing Corporation shall be responsible to the Exchange in respect of all trade information filed with the Exchange on such form prescribed by the Exchange."

[4] *See* Securities Exchange Act Release No. 19064 (September 20, 1982), 47 FR 42483 (September 27, 1982) (order approving SR–OCC–82–15). The Exchange notes that the Chicago Board Options Exchange ("CBOE") Rule 6.51(d) once contained the same language as Exchange Rule 1053(x). *See* Securities Exchange Act Release No. 16618 (March 3, 1980), 45 FR 15352 (March 10, 1980). That language no longer appears in the CBOE rulebook.

[5] Rule 1056 provides that "[e]very member organization which is a clearing member of the Options Clearing Corporation shall maintain an office at a location approved by the Exchange for the purpose of comparing Exchange options

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by improving the accuracy and readability of the amended rules.

With respect to Rules 1053, deleting the illogical reference to "effected during said business day" makes the rule understandable. Deleting an obsolete reference to a certificate which no longer has any meaning also eliminates a barrier to comprehension of that rule. With respect to Rule 1056, deleting the Exchange approval requirement eliminates a rule imposing an unnecessary administrative burden on the Exchange, given that the Exchange is indifferent in any event as to a clearing member's office location, thereby perfecting the mechanism of a free and open market and a national market system. Additionally, deleting the requirement that the Exchange be provided with a certified list of signatures eliminates another rule imposing an unnecessary administrative burden from the rulebook, streamlining the rulebook by removing a requirement whose marginal benefit, if any, is not justified by its cost. The Exchange notes that at least two other options exchanges, NASDAQ BX and NASDAQ Options Market, do not impose a similar "certified list of signatures" requirement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that clarifying amendments proposed herein will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act inasmuch as they simply improve the accuracy and readability of the rules and delete unnecessary administrative burdens. As noted above with respect to the certified list of signatures requirement, at least two other options exchanges, NASDAQ BX and NASDAQ Options Market, do not impose a similar requirement. Eliminating the requirement on Phlx should therefore reduce a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

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transactions. Any such member organization may use for the purpose of these Rules the office of another member organization which is a clearing member of the Options Clearing Corporation provided such use is pursuant to a written agreement approved by the Exchange. There shall be present at such office, between such hours as the Exchange shall from time to time fix, on every business day a representative of the member organization authorized to sign in the name of the member organization all instruments and transact all business requisite in connection with the comparison of Exchange options transactions. Each such member organization shall file with the Exchange, in such form as the Exchange shall prescribe, a certified list of signatures of its representatives who are authorized to sign instruments and transact all business necessary for conducting comparison of Exchange options transactions."

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(a)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–41 and should be submitted on or before July 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14715 Filed 6–21–16; 8:45 am]

BILLING CODE 8011–01–P

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78089; File No. SR–NASDAQ–2016–083]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 7018(a) and 7014(h)

June 16, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2016, The NASDAQ Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 7018(a) and 7014(h) to: (i) Provide a new credit for providing liquidity in securities of all three Tapes; (ii) amend the requirements of an existing credit tier provided in securities of all three Tapes; (iii) delete text from the preamble of Rule 7018(a) and from Rule 7014(h)(5) concerning Consolidated Volume; and (iv) make technical corrections to the rule text.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain credits for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades, and to make clarifying and technical changes to Rule 7018(a). Specifically, the Exchange proposes to amend Rules 7018(a) and 7014(h) to: (i) Provide a new credit for providing liquidity in securities of all three Tapes;[3] (ii) amend the requirements of an existing credit tier provided in securities of all three Tapes; (iii) delete text from the preamble of Rule 7018(a) and from Rule 7014(h)(5) concerning Consolidated Volume;[4] and (iv) make technical corrections to the rule text.

First Change

The purpose of the first change is to provide an additional credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. Currently, the Exchange provides several credits under Rules 7018(a)(1), (2), and (3), each of which apply to securities of a different Tape, in return for market-improving behavior. The Exchange is proposing to add a new credit tier of $0.00305 per share executed to a member that has shares of liquidity provided in all securities during the month representing at least 0.60% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, adds NOM[5] Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.10% or more of total industry ADV in the Customer clearing range[6] for Equity and ETF option contracts per day in a month on the Nasdaq Options Market, and adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.50% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market. Thus, to qualify under the new proposed credit tiers under Rule 7018(a)(1), (2) and (3), an Exchange member must be a NOM Participant and meet the NOM rebate criteria described above, in addition to providing at least 0.60% of Consolidated Volume on the Exchange.

Second Change

The purpose of the second change is to amend the criteria required to qualify for an existing credit, which is available to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. Currently, the Exchange provides a credit of $0.0029 per share executed in the security of any of the Tapes to a member with (i) shares of liquidity provided in all securities during the month representing more than 0.15% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) Total Volume, as defined in Chapter XV, Section 2, of the Nasdaq Options Market rules, of 125,000 or more contracts per day in a month executed on the Nasdaq Options Market. The Exchange is proposing to change the Total Volume requirement of paragraph (ii) of the rule to no longer require 125,000 or more contracts per day in a month executed on the Nasdaq Options Market, but to now require Total Volume of 0.90% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] There are three Tapes, which are based on the listing venue of the security: Tape C securities are Nasdaq-listed; Tape A securities are New York Stock Exchange-listed; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

[4] Consolidated Volume is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. *See* Rule 7018(a).

[5] NOM is an abbreviation of the "Nasdaq Options Market."

[6] NOM Chapter XV provides the following defined terms:

The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

The term "Non-NOM Market Maker" or ("O") is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Third Change

The purpose of the third change is to delete rule text from the preamble of Rule 7018(a) concerning Consolidated Volume. The rule currently defines Consolidated Volume as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. The Exchange excludes from the calculations of fees and credits that have a Consolidated Volume component all trading that occurs on the date of the annual reconstitution of the Russell Investments. The annual reconstitution represents a day of abnormal trading volume, as the Russell Investment indexes adjust holdings to accurately reflect the current state of equity markets and their market segments.[7] Consequently, the Exchange excludes trading occurring on the date of the Russell Investment reconstitution in all calculations of fees and credits because it is not reflective of a member's normal trading. The Exchange expresses this under the rule by stating that, "[f]or purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity." The Exchange believes that the text stating "expressed as a percentage of, or ratio to, Consolidated Volume" may be confusing to market participants in understanding how the Exchange excludes trading activity on the day of the Russell Investment reconstitution because some charges and credits under Rule 7018(a) are based on a measure of Consolidated Volume that is not a percentage or ratio thereof. Thus, the Exchange seeks to clarify that all volume based activity on the date of the Russell Investment reconstitution (including trading activity not based on a percentage or ratio of Consolidated Volume) is excluded from a member's trading activity for determining credit and fee tiers. This proposed change will ensure that members understand that all volumes on the day of the Russell Investment reconstitution would be excluded for purposes of measuring fees and credits.

The Exchange is also deleting an identical definition of Consolidated Volume from Rule 7014, which provides rules applicable to the Exchange's Market Quality Incentive Programs. The definition of Consolidated Volume under Rule 7014(h)(5) is identical to Rule 7018(a). In light of the changes to the definition under Rule 7018(a) and to avoid duplication in the rules, the Exchange is eliminating the identical definition from Rule 7014(h)(5) and is replacing it with text that cross references the definition under Rule 7018(a).

Fourth Change

The Exchange is proposing to make minor technical and corrective changes to the rule text. Specifically, the Exchange is adding punctuation to certain credit tiers, which was inadvertently omitted when the text was adopted. The Exchange is also reorganizing a credit tier so that it reads more consistently with other credit tiers under the rule. The reorganization of the credit tier does not change how the credit tier is applied. Last, the Exchange is deleting from Rules 7018(a)(2) and (3) text under a credit tier that concerns its application during a period that has since expired.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First Change

The Exchange believes that the proposed $0.00305 per share executed credit is reasonable because it is consistent with other credits that the Exchange provides to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. As a general principle, the Exchange chooses to offer credits to members in return for market improving behavior. Under Rule 7018(a), the various credits the Exchange provides for displayed quotes/orders require members to significantly contribute to market quality by providing certain levels of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs, and volume on NOM. The proposed credit will be provided to members that not only contribute to the Exchange by providing more than 0.60% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs during the month, but also add NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.10% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market, and add Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.50% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market.

The Exchange notes that the proposed credit is consistent with other credits that it provides for displayed quotes/orders under the rule, which range from $0.0015 per share executed to $0.00305 per share executed and which apply progressively more stringent requirements in return for higher per share executed credits. In this case, the proposed requirements to receive the $0.00305 per share executed credit are set very high, consistent with the criteria of other $0.00305 per share executed credit tiers available under Rule 7018(a). For instance, the Exchange provides a $0.00305 per share executed credit in securities of any Tape to a member with shares of liquidity provided in all securities during the month representing at least 0.15% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and that adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.90% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market. The Exchange notes that, while the level of Consolidated Volume is lower for the existing $0.00305 per share executed credit tier, it requires a significantly larger contribution to NOM Market Maker liquidity. The proposed new credit tier, however, requires a member to also provide a significant level of Customer, Professional, Firm, Non-NOM Market Maker, and/or Broker-Dealer liquidity that the current credit does not. Thus, the proposed new $0.00305 per share executed credit tier criteria is similar, in terms of the level of contribution that a member must make to the markets, to the criteria required to qualify for an existing $0.00305 per share executed credit that the Exchange offers. In sum, both of these credit tiers have high standards to earn the credit and, in return for meeting these high standards, both provide a high credit. For these reasons, the Exchange believes that the proposed $0.00305 per share executed credit is reasonable.

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[7] *See https://www.ftserussell.com/research-insights/russell-reconstitution.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

The proposed $0.00305 per share executed credit is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. Thus, if a member meets the requirements, it will receive the credit unless it qualifies for a higher credit. Moreover, as discussed above, some credit tiers require participation on NOM while others do not. As such, members will continue to have opportunities to qualify for similar credits based on market participation not tied to NOM.

Second Change

The Exchange believes that the proposed amendment to the requirements of an existing credit tier provided in securities of all three Tapes is reasonable because it merely replaces a measure of activity on NOM with another, both of which represent a significant contribution to that market. Specifically, the Exchange is replacing the requirement that a member have 125,000 or more contracts per day in a month executed on the Nasdaq Option Market with a new requirement that a member have 0.90% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on the Nasdaq Options Market. The Exchange notes that it is more precisely targeting market-improving behavior on NOM by replacing the fixed requirement of providing a certain number of contracts executed per day on NOM with a requirement that fluctuates based on total industry ADV in the Customer clearing range for both Equity and ETF options contracts per day. Thus, the Exchange is proposing to require NOM activity that is more closely correlated to the member's activity on NOM as compared to overall industry activity.

The Exchange believes that the proposed amendment to the requirements of an existing credit tier provided in securities of all three Tapes is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. Thus, if a member meets the requirements, it will receive the credit unless it qualifies for a higher credit. Moreover, as discussed above, some credit tiers require participation on NOM while others do not. As such, members will continue to have opportunities to qualify for similar credits based on market participation not tied to NOM. Also the proposed criteria will allow the threshold to fluctuate with industry volume, making it easier to achieve in low volume environments and more onerous to meet in high volume environments.

Third Change

The Exchange believes that deleting rule text from the preamble of Rule 7018(a) concerning Consolidated Volume and the related change to Rule 7014(h)(5) are reasonable because they will help clarify how volume related to credit and fee tiers will be handled by the Exchange during the annual Russell Indexes reconstitution. Currently, the rule text could be interpreted to apply to only a member organization's trading activity under a fee or credit tier that is expressed as a ratio or percentage of Consolidated Volume. The Exchange believes that such an interpretation would undermine the Exchange's intent to exclude the abnormal trading activity that occurs on that day. Accordingly, the Exchange believes that it is reasonable to remove the potentially confusing rule text.

The Exchange believes that deleting rule text from the preamble of Rule 7018(a) concerning Consolidated Volume and the related change to Rule 7014(h)(5) are an equitable allocation and are not unfairly discriminatory because the proposed changes only serve to clarify the application of the rule and does not alter how Consolidated Volume or activity for tiers is calculated. Thus, the Exchange will apply the same process to all similarly situated member organizations that seek to qualify under a fee or credit tier, or rebate under the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the changes to the credits provided for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades are reflective of the intense competition among trading venues in capturing order flow. Moreover, the proposed changes do not impose a burden on competition because Exchange membership is optional and is also the subject of competition from other trading venues. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–083 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–083. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–083, and should be submitted on or before July 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14713 Filed 6–21–16; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78090; File No. SR–C2–2016–008]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

June 16, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 2016, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule with respect to the Linkage Routing fee.[3] By way of background, the Linkage Routing fee is assessed to all orders routed pursuant to the Options Order Protection and Locked/Crossed Market Plan. The Linkage Routing fee is currently $0.70 per contract plus applicable Taker fees. The Exchange proposes to waive the Linkage Routing fee and Taker fees for orders that are routed to another Exchange if entered on (i) a prior business day or (ii) prior to 8:30 a.m. CST on the same business day.

The Exchange notes that trades on the open involve the matching of pre-opening orders and quotes and orders resting in the book from the prior business day and therefore, in effect, no Maker or Taker activity is occurring. As such, the Exchange currently waives the fees for trades on the open. The Exchange would similarly like to waive the Linkage Routing fee and applicable Taker fees for (i) pre-opening orders that are submitted by 8:30 a.m. CST and (ii) for orders resting in the book from a prior business day that link away to another Exchange. The Exchange notes that pre-opening orders submitted by 8:30 a.m. CST and orders resting in the book from a prior business day may potentially be linked away after being exposed during the opening process pursuant to C2 Rule 6.11.[4] The Exchange notes that it does not wish to assess Linkage or transaction fees for these orders however, as no Maker or Taker activity is occurring. Additionally, the Exchange notes that while a sender of an order intraday would likely know upon submission whether that order could potentially link away that day based on the National Best Bid and Offer (NBBO) and resting simple orders and quotes, a sender of an order could not know at the time of submission whether that order would link away after an opening rotation on the following trade date (or if entered the same business day prior to 8:30 a.m. CST, whether it would link away after being exposed during the upcoming opening). The Exchange therefore does not wish to assess Linkage or Taker fees for these orders.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee change on June 1, 2016 (SR–C2–2016–006). On June 10, 2016, the Exchange withdrew that filing and replaced it with SR–C2–2016–008.

[4] *See* C2 Rule 6.11.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,7 which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change is reasonable because market participants won't be assessed Linkage Routing or Taker fees for orders that are routed to another Exchange if entered on a prior business day or prior to 8:30 a.m. CST on the same business day. The Exchange also believes it's reasonable, equitable and not unfairly discriminatory to not assess linkage or transaction fees for these transactions because no Maker or Taker activity is occurring in these instances and because market participants cannot anticipate upon submission whether their order would be linked away after exposure during an opening process, which would result in that market participant being assessed Taker fees (and in some instances, when they may otherwise have expected to be treated as a Maker). The Exchange also wishes to avoid discouraging Trading Permit Holders ("TPHs") from canceling resting orders at the end of the day and from sending pre-opening orders (so as to avoid possible linkage and Taker fees if linked away after an opening rotation). Finally, the Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies to all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies to all TPHs and because the Exchange does not wish to assess fees on orders that a TPH cannot anticipate being linked away and unexpectedly incur Linkage and Taker fees. The Exchange does not believe that the proposed change will impose any burden on intermarket competition because it only effects trading on C2. Should the proposed change make C2 a more attractive trading venue for market participants at other exchanges, such market participants may elect to become market participants at C2. Additionally, the Exchange notes that it operates in a highly competitive market, comprised of fourteen options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2016–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2016–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2016–008 and should be submitted on or before July 13, 2016.

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14714 Filed 6–21–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9613]

Privacy Act; System of Records: Legal Case Management Records, State-21.

SUMMARY: Notice is hereby given that the Department of State proposes to amend an existing system of records, Legal Case Management Records, State-21, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I.

DATES: This system of records will be effective on August 1, 2016, unless we receive comments that will result in a contrary determination.

ADDRESSES: Any persons interested in commenting on the amended system of records may do so by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW., Washington, DC 20522–8100.

FOR FURTHER INFORMATION CONTACT: William Fischer, Acting Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW., Washington, DC 20522–8100, or at *Privacy@state.gov.*

SUPPLEMENTARY INFORMATION: The Department of State proposes that the current system will retain the name "Legal Case Management Records" (previously published at 42 FR 49709). Information in the Legal Adviser's Case Management Records is used to provide or facilitate the provision of legal advice and opinion to the offices of the Department of State and to facilitate defense or representation of the Department in litigation and in other legal proceedings. The proposed system will include modifications to all sections. The following sections have been added to the system of records, Legal Case Management Records, State-21, to ensure Privacy Act of 1974 compliance: Purpose and Disclosure to Consumer Reporting Agencies.

The Department's report was filed with the Office of Management and Budget. The amended system description, "Legal Case Management Records, State-21," will read as set forth below.

Joyce A. Barr,

Assistant Secretary for Administration, U.S. Department of State.

STATE–21

SYSTEM NAME:

Legal Case Management Records.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Department of State, 2201 C Street NW., Washington, DC 20520; Department of State annexes, U.S. Embassies, U.S. Consulates General, and U.S. Consulates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed administrative grievances and Equal Employment Opportunity complaints; individuals involved in disciplinary proceedings; individuals involved in alleged criminal activity or activity in violation of regulations; individuals who have filed claims against the United States; individuals who have sued the Department of State or any officials; individuals whose records may be relevant to legal proceedings involving the Department of State; individuals who are the subjects of inquiries from federal, state, and local agencies; individuals who are the subjects of income withholding orders, garnishment orders, bankruptcy orders, state tax liens, and similar court or agency documents; individuals who have raised or discussed legal or policy questions with the Office of the Legal Adviser; and individuals who have otherwise contacted the Office of the Legal Adviser.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information, such as name, contact information, and place of birth; employment histories; summaries of circumstances surrounding grievances, Equal Employment Opportunity complaints, claims, litigation, or disciplinary proceedings; internal memoranda; copies of indictments and charges; criminal records and reports of investigations; electronic mail (email); electronic records in various formats; supporting documentation for a case against an individual; contracts and other legal documents; income withholding orders, garnishment orders, bankruptcy orders, state tax liens, and similar court or agency documents; inquiries from federal, state, and local agencies and responses to those inquiries; documents that may be relevant to legal proceedings and investigations; correspondence related to legal or policy issues, regardless of format (paper or electronic).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 2651a; 22 U.S.C. 2656; 42 U.S.C. 659; 42 U.S.C. 666; 5 CFR part 581.

PURPOSE(S):

Information in the Legal Adviser's Case Management Records is used to provide or facilitate the provision of legal advice and opinion to the offices of the Department of State and to facilitate defense or representation of the Department in litigation and in other legal proceedings. Information may also be used to reply to requests from courts or agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The principal users of this information outside the Department of State are:

(a) The Department of Justice and other federal agencies in connection with facilitating defense of the Department in legal proceedings, analyzing legal issues, or fulfilling statutory responsibilities;

(b) Federal, state, and foreign courts, tribunals, and adjudicatory bodies in connection with legal proceedings;

(c) A party to a legal proceeding involving the Department, or the party's attorney or other designated representative in connection with legal proceedings;

(d) An attorney or other designated representative of any source, witness or subject in connection with legal proceedings;

(e) Appropriate committees and subcommittees of Congress in furtherance of their respective oversight functions; and

(f) Federal agencies having statutory or other lawful authority to maintain such information.

The Department may respond to federal, state, and local agency inquiries related to child support, alimony, bankruptcy, state tax lien, or similar issues. Pursuant to a court or agency order, the Department may disclose relevant information to private collection agencies, law firms and/or other individuals authorized to receive benefits under such order.

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[10] 17 CFR 200.30–3(a)(12).

The Department of State periodically publishes in the **Federal Register** its standard routine uses which apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to Legal Case Management Records, State-21.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

Storage:

Hard copy and electronic media.

RETRIEVABILITY:

Hardcopy by name, date, country, and/or subject; electronic by keyword or metadata.

SAFEGUARDS:

All users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Employed Staff who handle PII are required to take the FSI distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Legal Case Management Records, a user must first be granted access to the Department of State computer system.

Remote access to the Department of State network from non-Department owned systems is authorized only through a Department approved access program. Remote access to the network is configured with the Office of Management and Budget Memorandum M–07–16 security requirements which include but are not limited to two-factor authentication and time out function.

All Department of State employees and contractors with authorized access have undergone a thorough background security investigation. Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

When it is determined that a user no longer needs access, the user account is disabled.

RETENTION AND DISPOSAL:

Records are retired in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA). More specific information may be obtained by writing to the Director, Office of Information Programs and Services, A/GIS/IPS, SA–2, Department of State, 515 22nd Street NW., Washington, DC 20522–8100.

SYSTEM MANAGER AND ADRESS:

Executive Director, Office of the Legal Adviser and Bureau of Legislative Affairs, Department of State, 600 19th Street NW., Suite 5.600, Washington, DC 20522.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that the Office of the Legal Adviser might have records pertaining to him or her should write to the Director, Office of Information Programs and Services, A/GIS/IPS, SA–2, Department of State, 515 22nd Street NW., Washington, DC 20522–8100 or through the Department's Freedom of Information Act (FOIA) Web page at *https://foia.state.gov/Request/.* The individual must specify that he/she wishes the records of the Office of the Legal Adviser to be checked. At a minimum, the individual must include: name; date and place of birth; current mailing address and zip code; signature; brief description of the circumstances, including the approximate dates, which give the individual cause to believe that the Office of the Legal Adviser might have records pertaining to him or her.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to them should write to the Director, Information Programs and Services (address above).

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest records pertaining to them should write to the Director, Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information that is primarily obtained from the individual; offices of the Department of State; other government agencies, particularly the Department of Justice; court systems and administrative bodies; previous employers; neighbors; security investigation reports; other employees or individuals having knowledge of the issue about which a legal opinion is requested or who are party to litigation or investigation.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

Pursuant to 5 U.S.C. 552a (k)(1), records in this system may be exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), (f) of § 552a. See 22 CFR 171.26.

[FR Doc. 2016–14828 Filed 6–21–16; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Minneapolis-St. Paul International Airport, Minneapolis, Minnesota.

SUMMARY: The FAA is considering a proposal to change 5.69 acres of airport land from aeronautical use to non-aeronautical use and to authorize the lease of airport property located at Minneapolis-St. Paul International Airport, Minneapolis, Minnesota. The aforementioned land is not needed for aeronautical use.

The subject property is located to the southeast of United States Post Office and south of the Terminal 1 inbound and outbound roadways located at Minneapolis-St. Paul International Airport, Minneapolis, Minnesota. The subject property does not currently have a designated use. The proposed non-aeronautical use of the property is for the construction of a hotel.

DATES: Comments must be received on or before July 22, 2016.

ADDRESSES: Documents are available for review by appointment at the FAA Dakota-Minnesota Airports District Office, Simon Schmitz, Program Manager, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4640/FAX Number (612) 253–4611. Documents reflecting this FAA action may be reviewed at this same location or at the Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, MN 55450–2799.

Written comments on the Sponsor's request must be delivered or mailed to: Dakota-Minnesota Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706.

FOR FURTHER INFORMATION CONTACT: Simon Schmitz, Program Manager, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4640/ FAX Number (612) 253–4611.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The site was part of a 1955 land conveyance from the Administrator of Veterans' Affairs to the Metropolitan Airports Commission. The subject property is located southeast of the United States Post Office and south of the Terminal 1 inbound and outbound roadways at Minneapolis-St. Paul International Airport, Minneapolis, Minnesota. The subject property was previously leased by Northwest Airlines as an office building with an attached hangar. The office building and hangar have since been demolished and the site does not currently have a designated use. The proposed non-aeronautical use of the property is a ground lease for the development of a hotel which will generate additional revenue for the airport. The Metropolitan Airports Commission intends to enter into a 75-year fair market value lease with a hotel developer. The proposed ground lease will provide for reappraisal of the fair market ground rent as frequently as every five (5) years. The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Minneapolis-St. Paul International Airport, Minneapolis, Minnesota, from its obligations to be maintained for aeronautical purposes. Approval does not constitute a commitment by the FAA to financially assist in the change in use of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Following is a legal description of the subject airport property to be released at the Minneapolis-St. Paul International Airport, Minneapolis, Minnesota:

The Southwest Quarter of Section 29, Township 26 North, Range 23 West, Hennepin County, Minnesota.

Described as commencing at the northwest corner of Section 30, Township 28 North, Range 23 West, Hennepin County, Minnesota; thence South 00 degrees 25 minutes 00 seconds West, assumed bearing, along the west line of the Northwest Quarter of said Section 30 a distance of 705.21 feet; thence South 58 degrees 46 minutes 43 seconds East a distance of 7307.61 feet; thence North 31 degrees 14 minutes 07 seconds East a distance if 33.30 feet; thence South 58 degrees 45 minutes 53 seconds East a distance of 45.62 feet to the point of beginning; thence North 31 degrees 15 minutes 57 seconds East a distance of 726.77 feet; thence South 58 degrees 44 minutes 03 seconds East a distance of 681.60 feet; thence South 74 degrees 25 minutes 44 seconds West a distance if 996.38 feet to the point of beginning. Total Area: 5.69 acres (247.681 square feet).

Issued in Minneapolis, Minnesota, on June 7, 2016.

Andy Peek,

Manager, Dakota-Minnesota Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2016–14803 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–[2015–0342]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 91 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on April 1, 2016. The exemptions expire on April 1, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On March 1, 2016, FMCSA published a notice of receipt of Federal diabetes exemption applications from 91 individuals and requested comments from the public (81 FR 10703). The public comment period closed on March 31, 2016, and 5 comments were received.

FMCSA has evaluated the eligibility of the 91 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 91 applicants have had ITDM over a range of 1 to 43 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the March 1, 2016, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received five comments in this proceeding. Brad Frazier, Ernie Sanchez, James Dowden, Gregory Skloda, and an anonymous commenter are in favor of granting the exemptions.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 91 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 949 CFR 391.64(b)):

Erich R. Adam (WI)
Phillip W. Ballew (GA)
Dennis B. Basmajian (PA)
Glen A. Bayne (ND)
Gary E. Bennett (NC)
Harry Berrios (MA)
Terry D. Bettcher (NE)
Jeremy S. Beyerl (PA)
Norvan D. Bilyeu (OK)
Robert P. Blum (IA)
Mario Boccio (FL)
Christopher J. Branham (SC)
Willard A. Brown (VA)
Chanley W. Carter (FL)
Trevor K. Chaplin (IA)
Candace L. Coccimiglio (PA)
Matthew C. Costa (MA)
Wilfredo Costa (NY)
Joseph F. Coyle (KY)
Robert P. Crisp (SD)
Philip W. Cumbie (AL)
John H. Cuppett (GA)
Quentin W.S. Dasilva (PA)
Randal L. DeBord (TN)
Eudes N. De-Leon (PA)
Eric H. DeVaughn (MD)
Aleksandr Faynkikh (NY)
Berry C. Feuerbacher (GA)
Isaac W. Fitzgerald (UT)
Alex C. Ford (IL)
Robert C. Freeman (VA)
Timothy D. Frye (NY)
Samuel J. Gonzales (NM)
Carlos Guzman-Pineda (WA)
Steven R. Hatch (MI)
William D. Herman (MN)
Kyle W. Higgs (IL)
Floyd E. Holt, Jr. (VA)
Michael J. Jaques (MN)
Randall L. Jastram (SD)
Thomas M. Johnson (NM)
Steven R. Jordan (NC)
Kevin A. Kane (NY)
Ryan B. Kincade (CA)
Christopher S. Kuiper (MN)
Herman M. Laggart (MO)
William M. LaPrade (VA)
Martin L. Layden (NY)
John Malloy (PA)
Bobby L. McCallister (WV)
James W. McMenamin (PA)
Daniel J. Milles, Jr. (FL)
Miguel A. Molina (CO)
Darin R. Mullins (NY)
Douglas B. Murrell (IN)
Joshua A. Myers (OH)
Howard L. Nelson (IA)
William C. Nelson (IA)
Chris R. Niles (WA)
Keith E. Osterbaan (MI)
George R. Otis (MA)
Bolaji B. Oyegbola (DC)
Teddy D. Peller (AL)
Jeffrey P. Peloquin (NC)
Scott A. Pietruszynski (IL)
Louis Polillo (NJ)
John P. Reed, III (NJ)
Valentin Reyna, Jr. (AZ)
Randy D. Rinnels (IA)
William A. Robinson (IA)
Thomas W. Scott, Jr. (PA)
Gregory J. Skloda (NY)
Charles L. Spencer (NY)
Ricky L. Spencer (ME)
Roy E. Stroud (IA)
Kenneth W. Terhune, Jr. (DE)
Robert B. Thomas (PA)
Raymond L. Torrez (MI)
Bore Trivuncic (FL)
William M. Turner (NJ)
Timothy C. Urrutia (ID)
Eloy O. Valdez (CA)
James H. Vogt (IL)
Ronald L. Voigt (MN)
Michael P. Volpe (MA)
James R. Watkins (UT)
Anthony G. Wick (MA)
Michael C.J. Wilcox (NY)
Donald L. Winslow (ME)

James J. Wolf, Jr. (PA)
Kevin J. Yates (IL)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 13, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–14751 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0038]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 78 applications from individuals who requested an exemption from the Federal diabetes standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the diabetes requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal diabetes standard for a renewable 2-year period if it finds "such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption." The procedures for requesting an exemption are set forth in 49 CFR part 381.

Accordingly, FMCSA evaluated 78 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on the exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published in this notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following applicant, Robert A. Pettella, withdrew his application from the application process.

The following 12 applicants met the diabetes requirements of 49 CFR 391.41(b)(3) and do not need an exemption:

Reuben T. Askew
Steven E. Eastburn
Quinzell Faison
James Griffin
Bayram A. Kabakci
John C. Lasbury
James M. Moore
Saul N. Morales
Jaime S. Ortiz
Curtis W. Stanley
Eric A. Williams
Allen T. Wooten

The following 21 applicants were not operating CMVs in interstate commerce:

Felipe H. Abrego
Michael D. Adamson
Daniel J. Arena, Jr.
David R. Brooks, Jr.
Roger L. Harper
Gary T. Hedrick
Raymond Honaker
Shaun F. Hutchinson
Sondra R. Jones
Kevin M. Kurpiewski
Randy Lamb
James P. Moran
Jesse L. Mumford
Jason M. Palermo
John J. Raley II
Leonard F. Robinson
Donald G. Ross, Jr.
Tracy A. Rowland
Rachelle M. Seaver
Robert Taylor
Robert Webb

The following 3 applicants had renal insufficiency:

Harold J. Bowen, Jr.
Robert A. Rye
John J. Steele

The following 7 applicants had more than one hypoglycemic episode requiring hospitalization or the assistance of others, or had one such episode but not had one year of stability following the episode:

Timothy W. Adams
Robert A. Beaty
Andrew S. Crawford
Jesse J.D. Graber
Ryan B. Silva
Jimmy R. Toton
Deborah C. Williams

The following 9 applicants had other medical conditions making the applicant otherwise unqualified under the Federal Motor Carrier Safety Regulations:

Nader M. Abdelrahman
Richard G. Baker
Patrick L. Beasley
John T. Brecken
Robert E. Davis
Marlin L. Gabbard
Marvin D. Mitchell
David W. Presby
Darrel J. Shafer

The following applicant, Tina M.M. Kent, was unable to have an endocrinologist state the applicant is able to operate a CMV from a diabetes standpoint.

The following applicant, Henry G.E. Martinez, currently resides in Puerto Rico. He is not eligible because a Federal exemption is for drivers operating only in the United States.

The following 3 applicants did not meet the minimum age criteria outlined in 49 CFR 391.41(b)(1) which states that an individual must be at least 21 years old to operate a CMV in interstate commerce:

Ervin L. Fulton, Jr.
Henry G. McGinnis
Samuel J. Opatz

The following 19 applicants were excepted from the diabetes standard based on 49 CFR390.3(f):

Brian K. Aldrich
Christopher A. Ball
John A. Bowman
Wilbert A. Cummings, Jr.
Larry W. Davlin
Theodore J. Hargraves
Erick B. Hobson
Stanley Holiday, Jr.
Mark J. Huselstein
Wesley T. Johnson

Robert R. Martinez
Robert S. Mendoza
Arbra M. Patton
Vincent Randle
Robert J. Stepien
Franklin T. Sult
Calvin R. Williams
Melissa F. Williams
Ronald D. Williams

Issued on: June 13, 2016.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0040]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 70 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 22, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0040 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m.., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 70 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Michael J. Andries

Mr. Andries, 60, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Andries understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Andries meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Appiah T. Ankrah

Mr. Ankrah, 50, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ankrah understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ankrah meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Gregory P. Austin

Mr. Austin, 33, has had ITDM since 2001. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Austin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Austin meets the requirements of the vision standard at

49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

David F. Banko

Mr. Banko, 64, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Banko understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Banko meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

John T. Bardin

Mr. Bardin, 27, has had ITDM since 2007. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bardin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bardin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Joseph Berta IV

Mr. Berta, 62, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Berta understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Berta meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oklahoma.

John C. Birmingham

Mr. Birmingham, 60, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Birmingham understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Birmingham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

Brett C. Brayton

Mr. Brayton, 52, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brayton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brayton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Robert G. Canelo

Mr. Canelo, 44, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Canelo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Canelo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Mexico.

Christoph A. Chiappa

Mr. Chiappa, 49, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Chiappa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chiappa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

Johnny L. Cloy Sr.

Mr. Cloy, 62, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cloy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cloy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Tennessee.

Jon W. Collett

Mr. Collett, 61, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Collett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Collett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Ohio.

Joel A. Cote

Mr. Cote, 41, has had ITDM since 1981. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cote understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cote meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from Maine.

Donald E. Cowell

Mr. Cowell, 64, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cowell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cowell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Raymond J. Crosbie

Mr. Crosbie, 31, has had ITDM since 2005. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Crosbie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crosbie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Hampshire.

Elmer W. Danley

Mr. Danley, 68, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Danley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Danley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Kenneth Dennis Jr.

Mr. Dennis, 57, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dennis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dennis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Kentucky.

Robert D. Diefenbaugh

Mr. Diefenbaugh, 60, has had ITDM since 2009. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Diefenbaugh understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Diefenbaugh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Ronald A. Fancelli

Mr. Fancelli, 53, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fancelli understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fancelli meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Eduardo Fontes

Mr. Fontes, 82, has had ITDM since 1999. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fontes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fontes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Iowa.

William J. Gangloff

Mr. Gangloff, 57, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gangloff understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gangloff meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Spencer J. Gruba

Mr. Gruba, 46, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gruba understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gruba meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from North Dakota.

Phillip J. Guidice

Mr. Guidice, 45, has had ITDM since 2001. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Guidice understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Guidice meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Washington.

Darin K. Hansen

Mr. Hansen, 43, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hansen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hansen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

James A. Hanson

Mr. Hanson, 63, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hanson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hanson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Ohio.

William M. Haralson

Mr. Haralson, 49, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Haralson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Haralson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Tennessee.

Alejandro R. Hernandez

Mr. Hernandez, 56, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hernandez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hernandez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Florida.

Stephen R. Hill

Mr. Hill, 56, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hill understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hill meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

James A. Hutson

Mr. Hutson, 33, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hutson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hutson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Jon W. Jernigan

Mr. Jernigan, 33, has had ITDM since 1989. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jernigan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jernigan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Oklahoma.

Denise D. Johnston

Ms. Johnston, 60, has had ITDM since 2015. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Johnston understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Johnston meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Iowa.

Mark A. Johnston

Mr. Johnston, 27, has had ITDM since 2004. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnston understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnston meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Zachary J.F. Kinsey

Mr. Kinsey, 24, has had ITDM since 1995. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kinsey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kinsey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from California.

Steven J. Korb

Mr. Korb, 69, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Korb understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Korb meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Jongsub Lee

Mr. Lee, 48, has had ITDM since 2006. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Ramon Lopez

Mr. Lopez, 67, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lopez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lopez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a class A CDL from Texas.

David C. Love

Mr. Love, 61, has had ITDM since 2000. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Love understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Love meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds a Class B CDL from Illinois.

Cody J. Makuski

Mr. Makuski, 24, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Makuski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Makuski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

John T. McEntire III

Mr. McEntire, 22, has had ITDM since 2007. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McEntire understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McEntire meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from South Carolina.

Billy J. McNealy

Mr. McNealy, 61, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McNealy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McNealy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Carlos Medellin

Mr. Medellin, 45, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Medellin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Medellin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Harry E. Miller

Mr. Miller, 78, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Christopher K. Moore

Mr. Moore, 52, has had ITDM since 2004. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Moore understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moore meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Arizona.

Samuel B. Morris

Mr. Morris, 50, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Morris understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Bryan C. Mullins

Mr. Mullins, 35, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mullins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mullins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Zachary Nechi

Mr. Nechi, 26, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Nechi understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nechi meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy.

He holds an operator's license from Illinois.

Toriano T. Neely

Mr. Neely, 45, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Neely understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Neely meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Alabama.

Orlando Padilla

Mr. Padilla, 52, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Padilla understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Padilla meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Michael P. Pattie

Mr. Pattie, 57, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pattie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pattie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Rhode Island.

Tony L. Pennywell

Mr. Pennywell, 54, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pennywell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pennywell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Brian K. Porter

Mr. Porter, 41, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Porter understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Porter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Kentucky.

Oscar L. Quezada

Mr. Quezada, 61, has had ITDM since 2009. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Quezada understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Quezada meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from California.

Kenneth G. Reesman

Mr. Reesman, 55, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Reesman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reesman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Walter D. Richardson

Mr. Richardson, 55, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Richardson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Richardson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Karla Robles

Ms. Robles, 48, has had ITDM since 2012. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Robles understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Robles meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Florida.

Tracy A. Rowland

Mr. Rowland, 38, has had ITDM since 1985. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rowland understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rowland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from Washington.

Michael J. Russell

Mr. Russell, 54, has had ITDM since 2008. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Russell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Russell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Jeffrey M. Sandler

Mr. Sandler, 55, has had ITDM since 1995. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sandler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sandler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Paul A. Schaus

Mr. Schaus, 49, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schaus understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schaus meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Lloyd E. Schrunk

Mr. Schrunk, 57, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schrunk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schrunk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Evan C. Sebastian

Mr. Sebastian, 25, has had ITDM since 2000. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sebastian understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sebastian meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Nyanate F. Senyon

Mr. Senyon, 29, has had ITDM since 2007. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Senyon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Senyon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

Burton D. Shellabarger

Mr. Shellabarger, 67, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shellabarger understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shellabarger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

John M. Suttles

Mr. Suttles, 40, has had ITDM since 1996. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Suttles understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Suttles meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Ohio.

John R. Tupper

Mr. Tupper, 44, has had ITDM since 2000. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tupper understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tupper meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Thomas W. Upton

Mr. Upton, 45, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Upton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Upton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

James M. Walsh

Mr. Walsh, 46, has had ITDM since 1997. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Walsh understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walsh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Billy J. Webb, Jr.

Mr. Webb, 51, has had ITDM since 2005. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Webb understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Webb meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Mississippi.

Steven R. Williams

Mr. Williams, 58, has had ITDM since 1989. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Williams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Missouri.

James A. Yates

Mr. Yates, 51, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yates understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yates meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice.

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[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0040 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0040 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

Issued on: June 13, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–14747 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2012–0033]

Notice of Intent To Grant a Buy America Waiver to Palmetto Railways, a Division of the South Carolina Department of Commerce, To Use Wide-Span, Electric, Rail-Mounted Gantry Cranes

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public it intends to grant Palmetto Railways a waiver from FRA's Buy America requirement to use four (4) wide-span, electric, rail-mounted gantry cranes (WSCs).

DATES: Written comments on FRA's determination to grant Palmetto's Buy America waiver request should be provided to the FRA on or before June 29, 2016.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA–2012–0033. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.* Commenters should follow the instructions below for mailed and hand-delivered comments:

(1) *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590–0001; or

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must reference the "Federal Railroad Administration" and include docket number FRA–2012–0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting responses to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Johnson, Attorney-Advisor, FRA Office of Chief Counsel, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590, (202) 493–0078, *John.Johnson@dot.gov.*

SUPPLEMENTARY INFORMATION: FRA provides information on its reasons for granting this waiver in a letter to Palmetto Railways, quoted below:

Jeffrey M. McWhorter
President & CEO
Palmetto Railways
540 East Bay Street
Charleston, SC 29403

Re: Request for Waiver of Buy America Requirement for Wide-Span, Electric, Rail-Mounted Gantry Cranes

Dear Mr. McWhorter:

This letter is in response to your request that the Federal Railroad Administration (FRA) grant Palmetto Railways (Palmetto), a division of the South Carolina Department of Commerce, a waiver from FRA's Buy America policy applicable to FRA's Railroad Rehabilitation & Improvement Financing (RRIF) loan program. Palmetto requests a waiver to purchase four (4) wide-span, electric, rail-mounted gantry cranes (WSCs) because no company manufactures WSCs in the United States. Palmetto plans to use the WSCs at a brand new Intermodal Container Transfer Facility (ICTF) on the site of the former Charleston Navy Base, located in the City of North Charleston, South Carolina. The total estimated cost of the WSCs is $[ ] or 8.2 percent of the total investment of approximately $[ ] to construct the ICTF.

For the reasons set forth below, FRA is granting Palmetto's waiver request.

FRA applies 49 U.S.C. 24405(a)(1) to RRIF loans. Section 24405(a)(1) requires that the steel, iron, and manufactured goods used in a project be produced in the United States. FRA may waive the Buy America requirements if FRA finds that: (A) applying the requirements would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amounts or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (D) including domestic material will increase the cost of the overall project by more than 25 percent.

FRA concludes a waiver is appropriate because domestically-produced WSCs meeting Palmetto's specification for the ICTF project are not currently produced in the United States.

FRA bases this determination on the following:

- While there are domestic manufacturers for smaller, intermodal cranes, there are no U.S. manufacturers of large and wide-span intermodal cranes for ports;
- In 2011, U.S. Department of Transportation's Maritime Administration (MARAD) determined it had been fifteen years since mobile harbor cranes were manufactured in the United States and issued a waiver for foreign mobile harbor cranes. See 76 FR 14457 (March 16, 2011). This finding comports with previous waivers for cranes granted by MARAD in 2010 and the Federal Highway Administration (FHWA) in 2009. See 75 FR 68661 (November 8, 2010) and 74 FR 51363 (October 6, 2009), respectively;
- In 2013, the National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership (NIST–MEP) scouted for domestic rail-mounted and rubber tire mobile harbor cranes for intermodal containers and did not locate any U.S. manufacturers;
- In 2015, NIST–MEP scouted for domestic large, container vessel ship-to-shore gantry cranes and did not locate any U.S. manufacturers currently manufacturing these cranes;
- In 2015, Palmetto conducted extensive market research about active WSC manufacturers and found that they do not manufacture WSCs in the United States;
- In January 2015, FHWA granted a Buy America waiver for non-domestic harbor cranes after concluding that there are no domestic manufacturers. See 80 FR 3005 (January 21, 2015);
- On February 9, 2015, FRA provided public notice of this waiver request and a 15-day opportunity for comment on its Web site. FRA also emailed notice to over 6,000 persons who have signed up for Buy America notices through "GovDelivery." See *https://www.fra.dot.gov/Page/P0783*. FRA received no comments;
- In May 2015, FHWA granted another Buy America waiver for cargo cranes after concluding that there are no domestic manufacturers. See 80 FR 29790 (May 22, 2015); and
- In January 2016, FRA independently confirmed there are no domestic WSC manufacturers. FRA discussed the U.S. market with crane/intermodal experts from several port terminals and railroad intermodal operations with experience purchasing a variety of crane equipment, including WSC cranes.

FRA encourages Palmetto to follow through with the bidding process described in its waiver request, including Palmetto's expectation to weight "the ability of a supplier to offer a technically compliant, cost-effective solution that maximizes U.S.-origin content over the lifecycle of the WSCs." FRA is publishing notice of its decision to grant Palmetto's waiver request in the **Federal Register** to provide notice of such finding and an opportunity for public comment after which this waiver will become effective. This waiver applies only to the WSCs for Palmetto's procurement as identified in its waiver request.

Questions about this letter can be directed to, John Johnson, Attorney-Advisor, at *John.Johnson@dot.gov* or (202) 493–0078.

Sincerely,

Sarah E. Feinberg,
Administrator.

Issued in Washington, DC, on June 16, 2016.

Amitabha Bose,
Chief Counsel.

[FR Doc. 2016–14708 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0063]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PHOTOBOAT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 22, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0063. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PHOTOBOAT is:

Intended Commercial Use of Vessel: "Small passenger vessel for contract water taxi services and as a platform for additional professional marine photographers/videographers"

Geographic Region: "Washington State, Oregon, California"

The complete application is given in DOT docket MARAD–2016–0063 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: June 14, 2016.

T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.

[FR Doc. 2016–14653 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0092]

Pipeline Safety: Request for Revision of a Previously Approved Information Information Collection: National Pipeline Mapping System Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget (OMB) for review. On August 27, 2015, (79 FR 44246), PHMSA published a notice and request for comments in the **Federal Register** titled: "Pipeline Safety: Request for Revision of a Previously Approved Information Collection: National Pipeline Mapping System (NPMS) Program (OMB Control No. 2137–0596)," seeking comments on proposed changes to the NPMS data collection. During the comment period, which was extended until November 25, 2015, PHMSA received many comments on ways to improve this data collection. We are publishing this notice to address the comments received and to announce our proposed path forward.

DATES: Written comments on this information collection should be submitted by July 22, 2016.

ADDRESSES: Please send comments regarding this information collection request, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for PHMSA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Amy Nelson, GIS Manager, Program Development Division, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, by phone at 202–493–0591, or email at *amy.nelson@dot.gov*.

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I. Background

On July 30, 2014, (79 FR 44246) PHMSA published a notice and request for comments in the **Federal Register** titled: "Pipeline Safety: Request for Revision of a Previously Approved Information Collection: National Pipeline Mapping System (NPMS) Program (OMB Control No. 2137–0596)" seeking comments on proposed changes to the NPMS data collection. Within this notice, PHMSA laid out its intentions to revise the currently approved NPMS data collection to expand the data attributes collected and to improve the positional accuracy of NPMS submissions. On November 17, 2014, (79 FR 65295), PHMSA held a public meeting to grant the public an opportunity to learn more about PHMSA's proposal, to ask pertinent questions about the collection, and to offer suggestions regarding the path forward. Details about the meeting, including copies of the meeting's presentation files, can be found at: *http://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=101.* PHMSA encouraged participants of the meeting to submit comments on the proposed attributes to docket PHMSA–2014–0092. During the 60-day comment period, PHMSA received input from 28 different commenters comprised of pipeline operators, industry and interest groups, and the general public.

On August 27, 2015, (80 FR 52084) PHMSA published another notice in the **Federal Register** to address the many comments received and to request additional comments on the revised path forward. During this subsequent comment period, PHMSA received feedback and several suggestions on how to improve the quality and efficiency of this information collection. Commenters included:

AGA—American Gas Association
APGA—American Public Gas Association
API/AOPL—American Petroleum Institute/Association of Oil Pipelines
CPL—Chevron Pipeline Company
DOMAC—Distrigas of Massachusetts LLC
ETP—Energy Transfer Partners
GPA—Gas Processors Association
INGAA
John Russell
Lilah Haxton
MidAmerican Energy Company
Molly Wolf
NiSource Inc.
Northern Natural Gas Company
PST—Pipeline Safety Trust
SEP—Spectra Energy Partners
Southwest Gas Association
Tim Ligon
TPA—Texas Pipeline Association
TRANSCANADA CORP

A public meeting was also held on September 10, 2015, (80 FR 52084) and a technical workshop on November 25, 2015, (80 FR 65286). The purpose of the second public meeting and the technical workshop was to grant the public further opportunities to learn about PHMSA's proposal, to ask pertinent questions about the collection, and to offer suggestions regarding the path forward. Details about the second public meeting and the public workshop can be found at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=106.*

PHMSA is publishing this notice to address and respond to the comments received. Please note that technical details pertaining to the new data elements such as domains and reporting requirements for each attribute can be found in the NPMS Operator Standards Manual, (30-Day Notice Version), which is attached to the docket.

The data being requested is the first substantial update to NPMS submission requirements since the NPMS standards were developed in 1998. The NPMS is

PHMSA's only dataset which tracks *where* pipe characteristics occur, instead of how much/how many of those characteristics are in PHMSA's regulated pipelines. PHMSA seeks to reduce duplication and will consider the impact on the tabular data submitted through the annual reports once the data elements described in this notice are being collected. In PHMSA's last Congressional reauthorization, Section 60132(a) stated that PHMSA has the power to collect "any other geospatial or technical data, including design and material specifications, which the Secretary determines are necessary to carry out the purposes of this section. The Secretary shall give reasonable notice to operators that the data are being requested." The National Transportation Safety Board (NTSB) recommendation P–11–8 states that PHMSA should "require operators of natural gas transmission and distribution pipelines and hazardous liquid pipelines to provide system-specific information about their pipeline systems to the emergency response agencies of the communities and jurisdictions in which those pipelines are located. This information should include pipe diameter, operating pressure, product transported, and potential impact radius." Other NTSB recommendations are in section 4F with the attributes they address.

Specifically, the new data elements will:

- Aid the industry and all levels of government, from Federal to municipal, in promoting public awareness of hazardous liquid and gas pipelines and in improving emergency responder outreach. Currently, 787 Federal officials, 1,208 state officials and 4,791 county officials have access to the online mapping application. Providing these officials with an improved NPMS, containing system-specific information about local pipeline facilities, can help ensure emergency response agencies and communities are better prepared and can better execute response operations during incidents.
- Permit more powerful and accurate tabular and geospatial analysis, which will strengthen PHMSA's ability to evaluate existing and proposed regulations as well as operator programs and/or procedures.
- Strengthen the effectiveness of PHMSA's risk rankings and evaluations, which are used as a factor in determining pipeline inspection priority and frequency.
- Allow for more effective assistance to emergency responders by providing them with a more reliable, complete dataset of pipelines and facilities.
- Provide better support to PHMSA's inspectors by providing more accurate pipeline locations and additional pipeline-related geospatial data that can be linked to tabular data in PHMSA's inspection database.
- Better support PHMSA's research and development programs by helping to predict the impact of new technology on regulated pipelines.

II. Modified or Dropped Attributes

PHMSA received wide-ranging comments that provided various points of view on the proposed attributes and the effect the collection of this data would have on the pipeline safety program, the pipeline industry, and the general public. After much consideration, PHMSA will modify or drop the following attributes, standards or components at this time: Positional accuracy, Highest percent operating Specified Maximum Yield Strength, Decade of Installation, Year of last corrosion, dent, crack, and other ILI inspections, Coated/uncoated and cathodic protection, Type of coating, Year of original pressure test and its pressure, Year of last pressure test and its pressure, and Gas Storage Fields. PHMSA reserves the right to reconsider these attributes in the future. Complete details on all of the attributes, (such as format, choices, and whether it is a required attribute), can be found in Appendix A of the draft NPMS Operator Standards Manual, which is attached to the docket.

A. Positional Accuracy

This data element will be modified from the 2015 notice. In the 2015 notice, PHMSA proposed that hazardous liquid pipeline operators submit data with a positional accuracy of +/− 50 feet. Gas transmission operators would be required to submit data at +/− 50 feet accuracy for all segments which are in a Class 2, Class 3, or Class 4 area; are within a HCA or have one or more buildings intended for human occupancy; an identified site (See § 192.903); a right-of-way for a designated interstate; freeway, expressway, or other principal 4-lane arterial roadway as defined in the Federal Highway Administration's "Highway Functional Classification Concepts" within its potential impact radius. All other gas pipeline segments were requested to be mapped to a positional accuracy of +/− 100 feet. Multiple commenters noted that the reference GIS layer supplied to determine the "right-of-way for a designated interstate; freeway, expressway, or other principal 4-lane arterial roadway as defined in the Federal Highway Administration's 'Highway Functional Classification Concepts' within its potential impact radius" was spatially inaccurate and could not be relied upon to definitively designate the right-of-way. PHMSA conducted a close examination of the reference layer and came to the same conclusion. Therefore, the positional accuracy definition is modified to read as follows:

> Hazardous liquid pipeline operators must submit data with a positional accuracy of +/− 50 feet. Gas transmission operators must submit data at +/− 50 feet accuracy for all segments which are in a Class 2, Class 3, or Class 4 area; are within a HCA or have one or more buildings intended for human occupancy or an identified site, (See § 192.903), within its potential impact radius. All other gas pipeline segments must be mapped to a positional accuracy of +/− 100 feet.

Furthermore, multiple commenters requested more time to comply with the new positional accuracy standard. They noted that the most efficient and low-cost method of bringing their data into the new standard is to update centerlines during scheduled in-line inspection (ILI) runs. Commenters from INGAA requested a deadline of 2023 for complying with the new standard. API commenters requested several years to comply, and AGA also requested a seven-year period to bring 100% of pipelines into the proposed accuracy standard. PHMSA seeks to reduce the burden on operators to comply with this standard, and therefore requires all pipelines submitted to the NPMS have the stated new positional accuracy by the operator's 2024 submission (reflecting data as of 12/31/2023). Operators may submit their centerlines with the new accuracy standard earlier if some or all of their centerlines have been brought into the new standard. To clarify, part of an operator's yearly submission prior to 2024 may comply with the new 50/100 foot standard, while part retains the current 500 foot standard.

B. Highest Percent Operating Specified Maximum Yield Strength

This data element will be modified from the 2015 notice, which defined this data element as "hoop stress corresponding to the maximum operating pressure (MOP) or maximum allowable operating pressure (MAOP) as a percentage of Specified Minimum Yield Strength (SMYS). Report with up to one decimal place." Commenters argued that PHMSA can calculate this data element with the MAOP/MOP attribute plus pipe grade. However, this is not true in all cases. Where the allowable operating pressure differs from the actual operating pressure, or when the pipe is of unknown or unlisted specification, percent SMYS cannot be calculated. This data element is valuable to PHMSA as it helps show where the pipe material is stressed. PHMSA has a need to see where this attribute changes from year to year to help with risk ranking and inspection planning. This attribute will be changed to the following: Percent SMYS: Hoop stress corresponding to the maximum operating pressure (MOP) or maximum allowable operating pressure (MAOP) as a percentage of SMYS. Choose one of the following categories: L20 = <20%; L30 = ≥20% and <30%; L40 = ≥30% and <40%; L50 = ≥40% and <50%; L60 = ≥50% and <60%; L72 = ≥60% and <72%; L80 = ≥72% and <80%; G80 = >80%. Also, note that this new data element will eliminate the need for the "low-stress" existing data element. "Low-stress" will be removed from NPMS submissions. This information when contained in the NPMS system is considered Sensitive Security Information (SSI) per PHMSA's consultations with the Transportation Security Administration (TSA).

C. Decade of Installation

This data element will be modified from the 2015 notice. PHMSA asked operators to submit the "predominant" decade of installation on a pipe segment, signifying 90% or more of the physical pipe represented by the segment. In the comments and in the NPMS Operator Workshop held on November 18, 2015, operators explained that the burden would be lower if they could submit actual values, not predominant values. PHMSA is modifying this attribute to be defined as either actual or predominant, (90% or more of the represented segment), decade of installation.

D. Year of Last Corrosion, Dent, Crack, and Other ILI Inspections

These data elements will be modified from the 2015 notice. Commenters expressed concern about how this element would be used. If a null value was entered because a corrosion/dent/crack/other ILI inspection was not required by regulation, it would be misleading for PHMSA and its partners to view that segment as having increased risk. In order to reduce the burden on operators and accurately evaluate a pipe's condition and risk, PHMSA will create a new attribute which streamlines the information in this data element and in the pressure test elements (see sections H and I). The new elements are as follows: (1) Assessment method for the most recent assessment: ILI = Inline Inspection, DIR = Direct Assessment Method, or PT = Hydrostatic Pressure Test). (2) Assessment Year: 4-digit year of last assessment. These elements are mandatory submissions for pipeline segments that must be assessed per §§ 192 and 195. As described in the NPMS Operator Standards Manual, operators can indicate whether a segment is exempt from assessment, and if more than one assessment method was performed concurrently the last time the segment was assessed, an operator may indicate that in the additional assessment method fields, which are optional.

E. Coated/Uncoated and Cathodic Protection

These data elements will be modified from the 2015 notice. In that notice, PHMSA proposed two related data elements: Coated/uncoated pipe and type of coating. The operator was asked to identify whether the pipe was "effectively" cathodic protection (CP) coated steel, no CP coated steel, CP bare steel, no CP bare steel, or plastic. INGAA requested that this attribute be changed to a yes/no choice to reduce the burden on operators. PHMSA agrees that a yes/no choice is sufficient for its internal needs and for the needs of its stakeholders. Furthermore, PHMSA will remove the word "effectively" from the definition. The new data element is as follows: Whether the pipe is coated (yes/no).

F. Type of Coating

As explained in section F above, this data element will be dropped. Submitting the type of coating increases the burden on operators and PHMSA has determined that this data element is not necessary to serve its internal needs and those of its stakeholders.

G. Year of Original Pressure Test and Its Pressure

This data element will be dropped. As explained in section E, the pressure test and ILI inspection elements are being rolled up into the new Assessment Method element. The original pressure test and its pressure will no longer be required. If the original pressure test was the only assessment performed, it will be submitted as the Assessment Method and its year will be noted in the Assessment Year field. Operators will not be required to research the original pressure test otherwise.

H. Year of Last Pressure Test and Its Pressure

This data element will be modified from the 2015 notice. As explained in section E, the pressure test and ILI inspection elements are being rolled up into the new Assessment Method element. The requirement to always submit the year of the last pressure test has been removed; however, if the method of assessment was a pressure test, the year of the test is required in the Assessment Year field.

I. Gas Storage Fields

This data element will be modified from the 2015 notice. Commenters (Transcanada and Texas Pipeline Association) opposed this data element. AGA requested that the choices for field type be changed to aboveground tanks, underground cavern, depleted reservoir, or aquifer storage. PHMSA accepts the proposal to change the storage field types per AGA's request, but will also include a choice for injection wells. The new choices are noted in the NPMS Operator Standards Manual, Appendix A4. Note that this element when contained in the NPMS system is considered SSI per PHMSA's consultations with TSA.

III. Retained Attributes

After careful consideration of the comments received, along with the agency's pipeline safety goals, PHMSA has decided to move forward with the proposal to collect geospatial data on the following pipeline attributes with no substantial modifications.

A. Pipe Diameter

PHMSA originally proposed requiring operators to submit data on the nominal diameter, also called the nominal pipe size of a pipe segment. Knowing the diameter of a pipeline can help emergency responders determine the impact area of a pipeline in the event of a release. This attribute also gives PHMSA the opportunity to gain a broader understanding of the sizes of pipe being operated in any given geographic region, and to further assess potential impacts to public safety and the environment.

PHMSA received eighteen comments in support of including mandatory reporting of pipe diameter in the information collection. This included industry associations such as INGAA, AGA, API, and AOPL, public interest groups, and individual operators. Most concerns centered on clarification regarding whether PHMSA was requesting nominal pipe size or actual diameter. Nominal pipe size will be collected.

PHMSA proposes to move forward with this attribute as originally proposed. To clarify and be consistent with other reporting methods, diameter will be reported as the Nominal Pipe Size (NPS) of the pipe segment, which is the diameter in whole number inches, (except for pipe less than 5″), used to describe the pipe size, (*e.g.,* 8⅝″ outside diameter pipe has a nominal pipe size of 8). Decimals are not accepted for this measure (except for pipe with an outside diameter less than 5″). The primary benefit for incorporating this attribute is that a larger pipe may pose a greater hazard during a rupture. Knowing the location of large lines in relation to populated areas will help PHMSA effectively prioritize inspections and emergency response planning.

B. Wall Thickness

PHMSA originally proposed to collect data on the nominal wall thickness of a pipe. PHMSA intends to collect this information as originally proposed. Comments received on the last information collection revision include support from Spectra Energy Partners and Transcanada Corporation. AGA opposed collection of wall thickness, claiming it can be derived from SMYS. However, this is not possible when the pipe is of unknown or unlisted specification. Texas Pipeline Association asked that an "unknown" option be added due to data gaps for pre-1970 pipe. PHMSA will add an "unknown" option. API asked whether wall thickness would be required for grandfathered natural gas pipelines, and whether the lowest wall thickness per diameter could be submitted. In this case, operators should choose the lowest wall thickness value for that MAOP/MOP section. Otherwise, operators should submit actual wall thickness values. PHMSA intends to collect this information as originally proposed. For clarification, PHMSA is requesting the nominal wall thickness. PHMSA analysts and inspectors identified this as a fundamental piece of descriptive information for pipeline risk. This information is especially critical for determining the relative risk of corrosion.

C. Commodity Detail

PHMSA proposed operators submit commodity details for pipelines if the transported commodity is crude oil, product or natural gas, and subcategories of each. The list of commodity choices is available in the NPMS Operator Standards Manual (Appendix A). Other choices may be added as the need arises. During the last comment period, supporters of collecting commodity detail included AGA, INGAA, Southwest Gas Association, and Texas Pipeline Association. API/AOPL noted that the specific commodity can change on a daily basis, which could be misleading for emergency responders. PHMSA understands this is the case with many pipelines, and provides three fields, (CMDTY_DTL1, CMDTY_DTL2, and CMDTY_DTL3), to represent up to three specific commodities. The fields COMMODITY and CMDTY_DTL1 should represent the commodity in the pipe on 12/31 of the previous year.

PHMSA will move forward with this collection. This level of detail is required because of potential differences in leak characteristics, rupture-impacted hazardous areas and a pipeline's internal integrity. Emergency responders will also be able to better respond to pipeline incidents if they are prepared for the commodity which is likely being transported.

D. Pipe Material

PHMSA originally proposed that operators submit data on pipe material. Operators will be required to submit data on whether a segment was constructed out of cast iron, plastic, steel, composite, or other material. PHMSA received no opposition from commentators.

PHMSA proposes to move forward with this collection as originally introduced. Knowing the pipe material helps PHMSA determine the level of potential risk from excavation damage and external environmental loads. These can also be factors in emergency response planning.

E. Pipe Grade

PHMSA originally proposed that operators submit information on the predominant pipe grade of a pipeline segment. AGA believed this attribute was redundant because percentage of SMYS captured the risk from pipe grade. Spectra asked that PHMSA collect this information as actual, not predominant, values. This information is essential in issues regarding pipe integrity, and is a necessary component in determining the allowable operating pressure of a pipeline. The list of pipe grades is available in the NPMS Operator Standards (Appendix A). Operators are welcome to submit either actual or predominant (90% of pipe segment) values.

F. Pipe Join Method

PHMSA proposed operators submit data on the pipe join method. Operators will indicate whether pipes within the segment were welded, coupled, screwed, flanged, used plastic pipe joints, or other.

AGA asked that an option be added to submit the predominant value for this data. TransCanada opposed collecting this attribute. The Texas Pipeline Association and commenter Molly Wolf asked that an "unknown" choice be added. PHMSA will include the requested "unknown" choice. PHMSA analysts and inspectors would use this information to identify high-risk joining methods and will be used in PHMSA's risk rankings and evaluations. These models are used to determine pipeline inspection priority and frequency.

G. Seam Type

PHMSA proposed operators submit data on the seam type of each pipe segment. Options include: SMLS = Seamless, LFERW = Low frequency or direct current electric resistance welded, HFERW = High frequency electric resistance welded, UNKERW = Electric resistance welded with unknown frequency (possible if made around 1970), DSAW = Double side submerged arc weld, SSAW = Single side submerged arc weld, SPRSAW = Spiral single side submerged arc weld, EFW = Flash weld, LAPW = Lap weld, FBW = Furnace butt weld, PLAS = Plastic or OTHER = Other unlisted seam type, UNK = Unknown seam type.

Spectra Energy Partners supported inclusion of this attribute. TransCanada opposed collection, and commenter Molly Wolf recommended adding an "unknown" option.

PHMSA intends to collect this information with the possibility of limiting it to Classes 3, 4, and HCAs. An "unknown" option has been added. This information is used to determine which type of integrity management inspection assessment should apply, is important for risk analysis due to certain time-dependent risky seam types (*e.g.* LFERW), and is used to confirm MAOP/MOP.

H. Onshore/Offshore

PHMSA proposes operators designate whether a pipe segment is onshore or offshore.

Spectra Energy Partners and TransCanada were supportive of collecting this attribute and asked that PHMSA issue a clear definition of "offshore."

PHMSA will move forward with this attribute as originally proposed. PHMSA directs operators to the definition of an offshore pipeline found in §§ 191.3 and 195.2: "Offshore means beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters." Frequently, comparisons between the NPMS (PHMSA-generated) offshore mileage statistics and operator-generated annual report offshore mileage statistics do not match. This collection will allow PHMSA to standardize and compare the statistics for regulatory purposes.

I. Inline Inspection (Yes/No)

PHMSA originally proposed that operators indicate whether their system is capable of accommodating an ILI tool. INGAA, Spectra Energy Partners, and Transcanada supported collection of this attribute. AGA opposed collection. APGA asked that PHMSA clarify it was not requiring operators of transmission pipelines to make modifications to pipelines to accommodate ILI tools. A comment from the November 2015 Operator Workshop was to make this attribute predominant.

PHMSA intends to collect this information as originally proposed. This attribute is not collected on a predominant basis on the Annual Reports, so PHMSA will not accept this attribute on a predominant basis on the NPMS submission. For the purpose of this information collection, this attribute denotes whether a line is capable of accepting an inline inspection tool with currently available technology. There is no attached mandate to modify the pipeline so that it can accommodate ILI tools. ILI information is useful for tracking progress related to NTSB recommendations P–15–18 and P–15–20 which recommend that all natural gas transmission pipelines be capable of being in-line inspected and that PHMSA "identify all operational complications that limit the use of in-line inspection tools in piggable pipelines."

J. Class Location

Operators of gas transmission pipeline segments will be required to submit information on class location (§ 192.5) at the segment level.

PHMSA received four comments on this attribute (from AGA, Southwest Gas Association, Spectra Energy Partners, and Texas Pipeline Association) which were generally positive.

PHMSA intends to collect this information as originally proposed. This information is a critical measure of population risk, and is necessary to ensure that integrity management rules are properly applied to high-risk areas. Survey requirements vary based on class location, and this data is valuable for prioritizing, planning, and conducting inspections.

K. Gas HCA Segment

PHMSA proposed gas transmission operators identify HCA pipe segments as defined by § 192.903. AGA, INGAA, Southwest Gas Association, Spectra Energy Partners, Transcanada, and Texas Pipeline Association supported collecting data regarding Gas HCAs.

PHMSA intends to move forward with the Gas HCA segment attribute as originally proposed. This information will help emergency responders identify pipelines with greater potential for significant damage. Additionally, these attributes identify pipelines subject to integrity management procedures. PHMSA has explicit statutory authority to map high-consequence assets under 49 U.S.C. 60132(d). Gas operators are only expected to submit information on whether or not that segment is an HCA segment as defined in § 192.903.

L. Segment Could Affect a High Consequence Area (HCA)

PHMSA proposed hazardous liquid operators identify pipe segments which could affect HCAs as defined by § 195.450. Pipe segments can be classified as affecting or not affecting each of the following: a "highly populated area," an "other populated area," an Ecological Unusually Sensitive Area (USA), a Drinking Water USA, and a Commercially Navigable Waterway. See Appendix A of the NPMS Operator Standards for definitions. Spectra Energy Partners and the Texas Pipeline Association supported this attribute, while Transcanada opposed it.

PHMSA intends to move forward with the "could affect HCA" attributes as originally proposed, noting that it only applies to hazardous liquid pipeline segments. This information will help emergency response planners identify pipelines with greater potential for significant damage. Additionally it identifies pipelines subject to integrity management procedures. PHMSA has explicit statutory authority to map high-consequence assets under 49 U.S.C. 60132(d), and NTSB recommendation P–15–5 states that PHMSA should "revise the submission requirement to include HCA identification as an attribute data element to the National Pipeline Mapping System." This information will be secured by limiting access to government officials to mitigate potential security risks. Because of its unique sensitivity, the Drinking Water USAs when contained in NPMSA are considered SSI per PHMSA's consultations with TSA. See Section 4.D for additional details on security levels for each attribute.

M. Facility Response Plan Sequence Number, if Applicable

PHMSA proposed operators submit the Facility Response Plan sequence number for applicable liquid pipeline segments according to Part 194. This is a 4 digit number (*i.e.,* 0003) that is assigned by PHMSA and provided to the operator in the Letter of Approval for the submitted facility response plan. PHMSA will not collect the Control Number attribute because it is no longer used to identify a FRP. There was no significant commenter opposition to collecting this information.

PHMSA intends to move forward with this attribute as originally proposed. Access to the relevant facility response plan sequence number through NPMS would be beneficial to first responders in an emergency situation, especially in areas with multiple pipeline facilities. Furthermore, this would greatly reduce the workload of regional offices and even operators tasked with ensuring compliance with response plan regulations. Mapping the FRP sequence numbers allows PHMSA and its partners to identify gaps in compliance, assists with facility response plan reviews and approvals, and enables PHMSA to determine the applicable FRP for any given pipe in the NPMS. Since applicable liquid operators are required to have this information, PHMSA believes it should be minimally burdensome to submit it.

N. Abandoned Pipelines

PHMSA proposed that all gas transmission and hazardous liquid pipelines abandoned after the effective date of this information collection be mandatory submissions to the NPMS. Abandoned pipelines are defined as those that are "permanently removed from service" according to §§ 192.3 and 195.2. Abandoned lines are not currently required to be submitted to the NPMS unless they are offshore or cross a Commercially Navigable Waterway (note that these two types of abandoned lines also require a certification of abandonment). Operators would only need to submit this data in the calendar year after the abandonment occurs. This data element will be submitted by marking the pipe segment with a "B" in the STATUS_CD field, symbolizing abandonment.

AGA and Spectra Energy Partners supported the inclusion of this attribute for newly abandoned lines only. The GPA opposed collection, citing concerns over retaining records for which pipeline operators are no longer responsible. In response, PHMSA notes its Letter of Interpretation PI–08–0003 states abandoned facilities are still subject to PHMSA jurisdiction, even if they are no longer subject to certain PHMSA regulations. Also, 49 CFR 192.727(g)(1) and 195.59(a) already allow for PHMSA to collect information regarding certain abandoned facilities as part of the NPMS. Last, as noted above, data regarding abandoned facilities collected under this information collection is only required to be submitted in the first calendar year after the abandonment occurs.

PHMSA intends to move forward with this attribute as originally proposed. This information is important for PHMSA inspections, particularly to enforce proper abandonment procedures. PHMSA inspectors have identified incidents in the past involving lines which had been mischaracterized as abandoned (*i.e.* still containing a commodity). Additionally, there is a high level of public interest in this information. Since operators are already required to map their lines, PHMSA believes that identifying recently abandoned segments is not exceedingly burdensome.

O. Maximum Allowable Operating Pressure/Maximum Operating Pressure

PHMSA proposed that operators submit the maximum MAOP or MOP for a pipeline segment in pounds per square inch gauge.

PHMSA received comments in support of including this attribute from Spectra Energy Partners and Transcanada. AGA, Texas Pipeline Association, and an individual commenter opposed collection of this attribute. AGA noted that, combined with the Highest Percent Operating SMYS attribute, this attribute would increase the burden on operators. Texas Pipeline Association noted that, without full knowledge of how the MAOP/MOP was established, this attribute could lead to faulty conclusions in assessing risk. PHMSA intends to collect this information. While superficially similar to percent SMYS, MAOP/MOP is not identical and captures different elements of pipeline risk. Specifically, PHMSA inspectors identified it as an important element for incident analysis. MAOP/MOP helps enforce pressure levels between segments which are rated for different pressures. PHMSA engineers further noted that it is useful for determining the potential impact radius. This information when contained in the NPMS system is considered SSI per PHMSA's consultations with TSA.

P. Pump and Compressor Stations

PHMSA proposes operators submit a geospatial point file containing the centroid of the dedicated property location of pump (for liquid operators) and compressor (for gas transmission operators) stations. Appendix A2 in the NPMS Operator Standards contains technical details on submitting this information. API/AOPL, TransCanada, and the American Fuel and Petrochemical Manufacturers opposed this data collection due to security concerns.

PHMSA intends to move forward with this attribute as originally proposed. Pump and compressor stations are vulnerable areas, and emergency responders and planners need to know their locations for adequate emergency planning. Proximity to a compressor station has also been known to influence the level of stress on nearby segments, making this information valuable for prioritizing inspection resources. Additionally, the stations are often referenced as inspection boundaries for PHMSA's inspectors. Regarding security concerns, this information when contained in the NPMS system is considered SSI per PHMSA's consultations with TSA.

Q. Mainline Block Valves

PHMSA will collect mainline block valve locations and associated attributes as described in the NPMS Operator Standards Manual, Appendix A3. Valve location can assist emergency responders when working with pipeline operators during an emergency, and it is useful to PHMSA inspectors and partners to identify vulnerable points along a pipeline. Commenters AGA, Transcanada, Texas Pipeline Association, and Energy Transfer Partners opposed collecting this attribute, citing the sensitivity of the data as a concern. AGA proposed that only emergency valve locations be collected. PHMSA agrees that this dataset is sensitive and is considered SSI per PHMSA's consultations with TSA.

R. Breakout Tanks

PHMSA proposed to require the submission of breakout tank data. This is currently an optional submission; this revision would make it mandatory. PHMSA received positive comments from Texas Pipeline Association and Spectra Energy Partners. TransCanada opposed collection of this attribute.

PHMSA intends to proceed with this attribute as originally proposed. As detailed in Appendix A8 of the NPMS Operator Standards Manual, this information will be stored as a point for each tank. Please note that the operator contact information that was previously collected in optional breakout tank submissions has been removed, as it is already collected in the operator's transmittal letter which accompanies his/her submission. As well, the commodity codes and revision codes have been updated to match annual report codes and existing NPMS codes, and a clarifying note has been added to the TANKSIZE attribute. The breakout tank data helps inspectors locate individual tanks because a tank farm may contain both breakout tanks and other tanks.

S. Additional Liquefied Natural Gas Plant Attributes and Features

PHMSA proposed to collect additional data attributes and features for liquefied natural gas (LNG) plants used in or affecting interstate commerce (under PHMSA's jurisdiction). The new attributes include type of plant, year constructed and capacity; the new features are impoundments and exclusion zones. PHMSA received positive comments from Texas Pipeline Association and Spectra Energy Partners. Appendices A5–A7 of the NPMS Operator Standards Manual contain technical details on submitting.

PHMSA intends to proceed with this information as originally proposed. The new LNG attributes and features will be protected by limiting access to government officials.

Geospatial information on the location and characteristics of LNG plants helps PHMSA and emergency responder better understand potential safety risks on a national and local level, respectively, and provides location data which is not submitted on the Annual Report.

IV. General Comments

A. Reporting

INGAA, API/AOPL, AGA, and GPA submitted comments indicating that some of the proposed attributes appear to be duplicative of information that PHMSA already collects, especially from the annual reports. PHMSA acknowledges that some of the proposed attributes are also collected on the annual report forms. Over time, PHMSA has noticed that there are often discrepancies between the data submitted to the NPMS and the data that is recorded in the annual reports. Data quality is a top priority to PHMSA and its stakeholders. PHMSA plans to use to the geospatial data to corroborate and to fill in any holes that exist in the data collected via the annual reports.

B. Burden

A number of operators commented highlighting the expected burden of the proposed revisions to the information collection. Comments submitted by INGAA, API TPA, Ameren, and MidAmerican claimed that PHMSA greatly underestimated the expected burden of this revision. AGA, Ameren Illinois, Laclede Gas Co. and TransCanada noted that a high regulatory burden could divert resources from other safety initiatives such as integrity management and infrastructure replacement activities. Intermountain, Avista, Ameren Missouri, Ameren Illinois, Southwest Gas, AGA, and INGAA noted that many of the proposed changes were beyond the capability of their existing GIS, and would require resources to upgrade systems and hire individuals to convert non-GIS or paper records to an appropriate format.

PHMSA understands the concerns regarding the expected burden of this collection and proposes operators use a phased-approach to submit the data requested. PHMSA has agreed to give operators up to seven (7) years to submit positional accuracy data. We believe this to be the heaviest of burdens associated with this collection and hope that, by giving operators more time to plan and allocate resources; this timeframe reduces the annual associated burden significantly.

During the comment period, many operators provided a list of attributes that they would not take objection to sending. PHMSA believes that operators currently have many of these attributes in their GIS systems. For this reason, PHMSA requests that these attributes be submitted during Phase 1 of this information collection. PHMSA understands that some attributes will require additional layers of data before they can be extracted and submitted to the NPMS. PHMSA would not require submission of those particular attributes until Phase 2 of this information collection.

C. Authority

INGAA, AGA, API/AOPL, and CenterPoint Energy submitted comments suggesting that certain aspects of the proposal exceed what is considered acceptable for an information collection regulated under the Paperwork Reduction Act, and that it should have been considered as a rulemaking. These comments were received in response to the public notice published in the **Federal Register** on August 27, 2015, (80 FR 52084).

The "Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011," (the 2011 Act) (Public Law No: 112–90), was enacted "to provide for enhanced safety and environmental protection in pipeline transportation," and "to provide for enhanced reliability in the transportation of the Nation's energy products by pipeline." To facilitate this goal of providing for enhanced safety of transporting energy products via pipeline, Section 11 of the 2011 Act amended 49 U.S.C. 60132, (National pipeline mapping system), to require an operator of a pipeline facility, (except distribution lines and gathering lines), to provide to the Secretary of Transportation particular information including, "any other geospatial or technical data, including design and material specifications, that the Secretary determines are necessary to carry out the purposes of this section. The Secretary shall give reasonable notice to operators that the data are being requested." 49 U.S.C. 60132(a)(4).

Therefore, under § 60132, PHMSA has the authority as delegated from the Secretary, to request submission of this data as an information collection pursuant to the procedural requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and a rulemaking under the Administrative Procedure Act is not required, so long as reasonable notice is given.

With regard to the statutory requirement to provide reasonable notice to operators that the data are being requested, PHMSA issued two information collection notices in the **Federal Register** providing 60-day comment periods each on July 30, 2014, (79 FR 44246), and August 27, 2015 (80 FR 52084) respectively, issued notices extending the comment periods for these, held a public meeting on November 17, 2014, (79 FR 65295), September 10, 2015, (80 FR 52084), and a technical workshop on November 25, 2015 (80 FR 65286), (information about the November 25, 2015 public workshop can be found at ***https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=107***). Therefore, PHMSA has provided a number of advance notifications and opportunities to provide comments.

API/AOPL further commented that the NPMS is intended for public awareness, rather than for other roles such as risk management. Section 60132(d) requires the Secretary to maintain as part of NPMS a map of designated high-consequence areas in which pipelines are required to meet integrity management program regulations, therefore implying the NPMS is to be used for pipeline safety purposes beyond public awareness and emergency response. In addition to public awareness and information to improve emergency response capabilities, PHMSA considers this data as valuable for a number of purposes described in the Background section of this notice.

The GPA submitted comments requesting clarification as to the facilities to which this information collection applies. In response to these comments, PHMSA states the requirements of this information collection apply only to facilities subject to 49 CFR parts 192, 193, and 195.

The GPA also respectfully suggests that providing information regarding the location of refineries, processing plants, and treatment facilities is not within PHMSA's current purview. PHMSA would note that any facility where natural gas or hazardous liquids arrive and depart by pipeline are part of the pipeline transportation system. While there may be equipment on the grounds of such a facility that is unregulated under Parts 192 or 195, such as storage wells and processing or treatment equipment, it does not mean that the entire facility is "non-jurisdictional." PHMSA collects information consistent with its mission to ensure pipeline safety. PHMSA does not collect information that has no relevance to pipeline and storage operations. With respect to refineries used in the petroleum industry, they are non-jurisdictional to PHMSA and we are not proposing to collect information on refineries except that reporting the location of a particular pipeline that ends at a refinery necessarily imparts ancillary information on the location of the refinery. In any event we do not believe the GPA's members generally include refineries.

D. Data Security

PHMSA understands that the new data elements have varying degrees of sensitivity, and that some are highly sensitive when contained in the NPMS system. PHMSA has discussed the appropriate security categorization for the new data elements with TSA and has reviewed all comments regarding security submitted during the two 60-day notice comment periods.

The following new data elements when contained in the NPMS system are considered SSI (Sensitive Security Information). These elements will be kept in an SSI-compliant environment at PHMSA. PHMSA would only release this information to covered persons with a need to know the information, as defined in 49 CFR part 15.

SSI Elements

- Percent SMYS
- MAOP/MOP
- Segment "could affect" a Drinking Water USA
- Pump and compressor stations
- Gas storage fields
- Mainline block valves

The elements in the list below are proposed to be restricted to government officials by inclusion in the Pipeline Information Management and Mapping Application (PIMMA), on *www.npms.phmsa.dot.gov.* PIMMA is password-protected and available only to government officials (who may see their area of jurisdiction). All PIMMA users are vetted to confirm their identity and employment before a password is issued. Pipeline operators may gain access to PIMMA but they will see only the pipelines they operate. The elements below may also be provided in shapefile or geodatabase format to requesting government officials upon verification of identity and employment, and receipt of a signed letter consenting to PHMSA's data security policy.

Elements Restricted to Government Officials

- Pipe diameter
- Commodity detail
- Pipe grade
- Seam type
- Decade of installation
- Wall thickness
- Inline inspection (yes/no)
- Class location
- Gas HCA segment
- Segment "could affect" a Highly Populated Area, Other Populated Area, Ecological USA, or Commercially Navigable Waterway
- Assessment method
- Assessment year
- Coated/uncoated
- FRP sequence number
- The proposed new LNG plant attributes (type of plant, total capacity, year constructed, impoundments, and exclusion zones)
- Breakout tank capacity

The following elements are proposed to be displayed on the NPMS Public Viewer, which can be accessed by the general public. The current extent (one county per session) and zoom level (no closer than 1:24,000) restrictions will remain in place.

Public Viewer Elements

- Pipe material
- Pipe join method
- Onshore/offshore
- Abandoned lines
- LNG plant locations and attributes not listed under the "elements restricted to government officials" section
- Breakout tank locations and attributes (excluding capacity)

E. Industry Counter-Proposals

Industry groups AGA, INGAA, API, and AOPL submitted comments which included alternative plans for revisions to the NPMS. These plans included support for a limited number of data elements in the 2015 **Federal Register** notice. The table below shows the elements supported by the counter-proposals.

Data element	Supported in counter-proposal
Diameter	AGA, INGAA, API, AOPL.
Commodity detail	AGA.
Pipe material	AGA, INGAA, API, AOPL.
Highest percent operating SMYS	AGA.
Decade of installation	AGA.
Wall thickness	API, AOPL.
Inline inspection (yes/no)	INGAA.
Class location	AGA.
Gas HCA segment	AGA, INGAA.
Segment "could affect" an HCA	INGAA.
Coated/uncoated (yes/no only)	AGA, INGAA.

PHMSA finds that all sets of attributes proposed by industry groups are inadequate to meet PHMSA's risk assessment and emergency planning goals as well as mandates from Congress and recommendations from NTSB. The next section provides a table showing the new data elements which will fulfill the recommendations and mandates.

F. Mandates and Recommendations

In additional to satisfying DOT mission needs, PHMSA mission needs, PHMSA internal group needs, PHMSA partner needs and PHMSA stakeholder needs, this Information Collection is gathering geospatial information which will be used to fulfill Congressional mandates and National Transportation Safety Board (NTSB) recommendations. These mandates and recommendations include:

- NTSB 15–4: Increase the positional accuracy of pipeline centerlines and pipeline attribute details relevant to safety in the National Pipeline Mapping system.
- NTSB 15–5: Revise the submission requirement to include high consequence area identification as an attribute data element to the National Pipeline Mapping System.
- NTSB 15–8: Work with the appropriate federal, state, and local agencies to develop a national repository of geospatial data resources for the process for High Consequence Area identification, and publicize the availability of the repository.
- NTSB 15–22: Develop and implement a plan for all segments of the pipeline industry to improve data integration for integrity management through the use of geographic information systems.
- Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Section 11: Any other geospatial or technical data, including design and material specifications, that the Secretary determines are necessary to carry out the purposes of this section. The Secretary shall give reasonable notice to operators that the data are being requested.

The following table shows the applicable data elements.

Mandate or recommendation	Information collection data element(s)
NTSB 15–4	Positional accuracy, Diameter, Commodity detail, SMYS, MAOP/MOP, Seam type, Decade of installation, Wall thickness, Pipe join method, Inline Inspection y/n, Class location, Gas HCA segment, Segment "could affect" an HCA, Coated/uncoated.

Mandate or recommendation	Information collection data element(s)
NTSB 15–5	Class location, Gas HCA segment, Segment "could affect" an HCA.
NTSB 15–8	Class location, Gas HCA segment, Segment "could affect" an HCA.
NTSB 15–22	Pipe material, SMYS, MAOP/MOP, Seam type, Wall thickness, Pipe join method, Inline Inspection y/n, Year of last ILI inspection, Coated/uncoated, Pressure test.
Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Section 11.	Diameter, Pipe material, SMYS, Seam type, Wall thickness, Pipe join method, Inline Inspection y/n.

G. Definitions

Several commenters, as well as attendees of the November 2015 Operator Workshop, expressed serious concerns about the use of the word "predominant." These concerns centered on how the usage of predominant attributes is poorly defined, difficult to verify compliance with, and risks improper categorization of pipeline risk. From a technical standpoint, operators indicated it was more difficult for them to generalize values into a "predominant" value than to submit actual values. For these reasons, submitting a "predominant" value will always be optional. Appendix A of the NPMS Operator Standards details the data elements for which "predominant" is an option.

V. Timeline for Collection of New Data Elements

PHMSA has heard operators' and industry's concerns regarding the amount of time needed to compile, research, and/or prepare the data required for this information collection. PHMSA will collect the new data elements in three phases. Phase 1 data will be collected the first submission year after the effective date, Phase 2 data will be collected the second submission year after the effective date, and Phase 3 data will be collected in 2024. The data elements in each phase are listed below:

Phase 1

- Pipe diameter
- Commodity detail
- Pipe material
- Pipe grade
- Wall thickness
- Pipe joining method
- MAOP/MOP
- SMYS
- Seam type
- Onshore/offshore
- Inline inspection (yes/no)
- Class location
- Gas HCA segment
- FRP sequence number
- Abandoned pipelines
- Pump and compressor stations
- Breakout tanks
- LNG plants

Phase 2

- Decade of installation
- Segment could affect an HCA
- Assessment method
- Assessment year
- Coated (yes/no)
- Gas storage fields
- Mainline block valves

Phase 3

- Positional accuracy conforms with new standards (note that operators are encouraged to submit their centerlines with the new accuracy standard as the data becomes available)

VI. Summary of Impacted Collection

The following information is provided for this information collection: (1) Title of the information collection, (2) OMB control number, (3) Current expiration date, (4) Type of request, (5) Abstract of the information collection activity, (6) Description of affected public, (7) Frequency of collection, and (8) Estimate of total annual reporting and recordkeeping burden. PHMSA requests comments on the following information collection:

Title: National Pipeline Mapping System Program.

OMB Control Number: 2137–0596.

Form Numbers: N/A.

Expiration Date: 6/30/2016.

Type of Review: Revision of a Previously Approved Information Collection.

Abstract: Each operator of a pipeline facility (except distribution lines and gathering lines) must provide PHMSA geospatial data for their pipeline system and contact information. The provided information is incorporated into NPMS to support various regulatory programs, pipeline inspections, and authorized external customers. Following the initial submission of the requested data, the operator must make a new submission to NPMS if any changes occur so PHMSA can maintain and improve the accuracy of the NPMS's information.

Respondents: Operators of natural gas, hazardous liquid, and liquefied natural gas pipelines.

Number of Respondents: 1,211.

Number of Responses: 1,211.

Frequency: Annual.

Estimate of Total Annual Burden: 171,983 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on June 16, 2016, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 2016–14712 Filed 6–21–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program

AGENCY: Office of the Comptroller of the Currency (OCC).

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information

collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, "Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Written comments should be received on or before July 22, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0180, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0180, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC requests that OMB extend its approval of the following collection:

Title: Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program.

OMB Control No.: 1557–0180.

Form Numbers: 8010–1/8010–9.

Abstract:

Minimum Security Devices and Procedures

Under 12 CFR 21.2 and 21.4 and 12 CFR 168.2 and 168.4, national banks and Federal savings associations are required to designate a security officer who must develop and administer a written security program. The security officer shall report at least annually to the institution's board of directors on the effectiveness of the security program. The substance of the report shall be reflected in the board's minutes. These requirements ensure that each institution has a security officer who is responsible for the institution's security program and that the institution's management and board of directors are aware of the content and effectiveness of the program. These requirements are necessary to ensure prudent institution management and safety and soundness.

Suspicious Activity Report (SAR)

The Financial Crimes Enforcement Network (FinCEN) and Federal financial institution supervisory agencies [1] adopted the SAR in 1996 to simplify the process through which depository institutions inform their regulators and law enforcement about suspected criminal activity. The SAR was updated in 1999, 2002, 2006, 2009, and 2012.

In 1992, the Department of the Treasury was granted broad authority to require suspicious transaction reporting under the Bank Secrecy Act (BSA). *See* 31 U.S.C. 5318(g). In 1996, FinCEN, which has delegated authority to administer the BSA, joined with the Federal financial institution supervisory agencies in requiring, on a consolidated form, reports of suspicious transactions. See 31 CFR 1020.320(a) (formerly 31 CFR 103.18(a)). The filing of SARs is necessary to prevent and detect crimes involving depository institution funds, institution insiders, criminal transactions, and money laundering. These requirements are necessary to ensure institution safety and soundness.

Banks and savings associations are required to maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years. The documents are necessary for criminal investigations and prosecutions.

Procedures for Monitoring Bank Secrecy Act Compliance

Under 12 CFR 21.21, national banks and savings associations are required to develop and provide for the continued administration of a program reasonably designed to assure and monitor their compliance with the BSA and applicable Treasury regulations. The BSA compliance program shall be reduced to writing, approved by the board of directors and noted in the minutes. These requirements are necessary to ensure institution compliance with the BSA and applicable Treasury regulations.

Type of Review: Regular.

Affected Public: Business, for-profit institutions, and non-profit.

Estimated Number of Respondents: 1,485.

Estimated Total Annual Burden: 714,205 hours.

On March 25, 2016, the OCC published a notice for 60 days of comment concerning this collection, 81 FR 16277. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information shall have practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 16, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2016–14674 Filed 6–21–16; 8:45 am]

BILLING CODE 4810–33–P

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[1] The Federal financial institution supervisory agencies are the OCC, Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2016–0015]

Minority Depository Institutions Advisory Committee

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) announces a meeting of the Minority Depository Institutions Advisory Committee (MDIAC).

DATES: The OCC MDIAC will hold a public meeting on Tuesday, July 12, 2016, beginning at 8:30 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The OCC will hold the July 12, 2016 meeting of the MDIAC at the Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Beverly Cole, Designated Federal Officer and Senior Advisor to the Senior Deputy Comptroller for Midsize and Community Bank Supervision, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: By this notice, the OCC is announcing that the MDIAC will convene a meeting at 8:30 a.m. EDT on Tuesday, July 12, 2016, at the Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219. Agenda items will include current topics of interest to the industry. The purpose of the meeting is for the MDIAC to advise the OCC on steps the agency may be able to take to ensure the continued health and viability of minority depository institutions and other issues of concern to minority depository institutions. Members of the public may submit written statements to the MDIAC by any one of the following methods:

- *Email to: MDIAC@OCC.treas.gov.*
- *Mail to:* Beverly Cole, Designated Federal Officer, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

The OCC must receive written statements no later than 5:00 p.m. EDT on Tuesday, July 5, 2016. Members of the public who plan to attend the meeting should contact the OCC by 5:00 p.m. EDT on Tuesday, July 5, 2016, to inform the OCC of their desire to attend the meeting and to provide information that will be required to facilitate entry into the meeting. Members of the public may contact the OCC via email at *MDIAC@OCC.treas.gov* or by telephone at (202) 649–5420. Attendees should provide their full name, email address, and organization, if any. For security reasons, attendees will be subject to security screening procedures and must present a valid government-issued identification to enter the building. Members of the public who are deaf or hard of hearing should call (202) 649–5597 (TTY) no later than 5:00 p.m. EDT on Tuesday, July 5, 2016, to arrange auxiliary aids such as sign language interpretation for this meeting.

Dated: June 16, 2016.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2016–14755 Filed 6–21–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0616]

Proposed Information Collection (Application for Residential Care Home Program Sponsor Application, VA Form 10–2407) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Brian McCarthy, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Brian.McCarthy4@va.gov*. Please refer to "OMB Control No. 2900–0616" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Residential Care Home Program Sponsor Application—VA Form 10–2407.

OMB Control Number: 2900–0616.

Type of Review: Revision of a currently approved collection.

Abstracts: VA Form 10–2407 is necessary for the residential care home to qualify to provide care to veteran patients. This information is collected under the authority of Title 38, Part II, Sections 1720 and 1730. The form covers community providers. Community Nursing Homes (CNHs) already use the form, and the form will cover Home Health and Hospice Care agencies and community adult day health care centers.

Affected Public: Individuals or households.

Estimated Annual Burden: 42 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Annually.

Estimated Annual Responses: 500.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14679 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0588]

Proposed Information Collection (Acquisition Regulation (VAAR) Provision 852.211–71, Special Notice) Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Ricky Clark , Office of Acquisition and Logistics (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *ricky.clark@va.gov*. Please refer to "OMB Control No. 2900–0588" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Ricky Clark at (202) 632–5400, Fax (202) 343–1434.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

Titles: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.211–71, Special Notice.

OMB Control Number: 2900–0588.

Type of Review: Extension without change of a previously approved collection.

Abstract: VAAR provision 852.211–71 is used only in VA's telephone system acquisition solicitations and requires the contractor, after award of the contract, to submit descriptive literature on the equipment the contractor intends to furnish to show how that equipment meets the specification requirements of the solicitation. The information is needed to ensure that the equipment proposed by the contractor meets the specification requirements. Failure to require the information could result in the installation of equipment that does not meet contract requirements, with significant loss to the contractor if the contractor subsequently had to remove the equipment and furnish equipment that did meet the specification requirements. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 875 hours.

Estimated Average Burden per Respondent: 300 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 175.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14685 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0586]

Proposed Information Collection (Brand Name or Equal) Activities Under OMB Review Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Ricky Clark, Office of Acquisition and Logistics (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *Ricky.clark@va.gov*. Please refer to "OMB Control No. 2900–0586" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Ricky Clark at (202) 632–5400, Fax (202) 343–1434.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

Titles: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–72, Technical Industry Standards.

OMB Control Number: 2900–0586.

Type of Review: Extension without change of a currently approved collection.

Abstract: VAAR provision 852.211–72 requires that items offered for sale to VA under the solicitation conform to certain technical industry standards, such as Underwriters Laboratory (UL) or the National Fire Protection Association, and that the contractor furnish evidence to VA that the items meet that requirement. The evidence is normally in the form of a tag or seal affixed to the item, such as the UL tag on an electrical cord or a tag on a fire-rated door. This requires no additional effort on the part of the contractor, as the items come from the factory with the tags already in place, as part of the manufacturer's standard manufacturing operation. Occasionally, for items not already meeting standards or for items not previously tested, a contractor will have to furnish a certificate from an acceptable laboratory certifying that the items furnished have been tested in accordance with, and conform to, the specified standards. Only firms whose products have not previously been tested to ensure the products meet the industry standards required under the solicitation will be required to submit a separate certificate. The information will be used to ensure that the items being purchased meet minimum safety standards and to protect VA employees, VA beneficiaries, and the public. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 1225 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,450.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14683 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0376]

Proposed Information Collection (Agent Orange Registry Code Sheet; VA Form 10–9009) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Brian McCarthy, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Brian.McCarthy4@va.gov.* Please refer to "OMB Control No. 2900–0376" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Agent Orange Registry Code Sheet, VA Form 10–9009.

OMB Control Number: 2900–0376.

Type of Review: Extension of a currently approved collection.

Abstract: VA employees obtain demographic data from existing records. The examining physician, Environmental Health (EH) Coordinator (formerly identified as the Agent Orange coordinator)/or other designated personnel obtain the remainder of the information during the Agent Orange registry physical examination process. The information obtained from the Veteran is entered directly onto an electronic VA Agent Orange Form 10–9009, Agent Orange Registry Worksheet (formerly identified as an Agent Orange Registry Code Sheet), via a secured Web site *http://vaww.registries.aac.va.gov* by VA personnel and transmitted directly to the Environmental Agents Service (EAS) Agent Orange Registry database located at the Austin Information Technology Center (AITC), Austin, TX. Edits are automatically accomplished at the time of entry. The EAS Registries Web site allows you to edit pretty much all the information that has been entered. Some VA facilities will enter the information into the EAS Registries Web site while the Veteran is sitting in front of them. Other facilities will have the Veteran and the examiner complete the Agent Orange Worksheet on paper form, and then later enter the worksheet data into the EAS Registries Web site. VHA Handbook 1302.01, dated 9/5/06 states: "AOR worksheets and dated follow-up letters must be scanned, or made electronic, and attached to an appropriately titled CPRS progress note."

The registry provides a mechanism to catalogue prominent symptoms, reproductive health, and diagnoses and to communicate with Agent Orange Veterans. VA keeps Veterans informed on research findings or new compensation policies through periodic newsletters. The voluntary, self-selected nature of this registry makes it valuable for health surveillance; however, it is not designed or intended to be a research tool and therefore, the results cannot be generalized to represent all Agent Orange Veterans.

Affected Public: Individuals or households.

Estimated Annual Burden: 6,667 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Annual Responses: 20,000.

By direction of the Secretary:

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14677 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0600]

Proposed Information Collection; Comment Request (Reconsideration of Denied Claims)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain

information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Brian McCarthy, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Brian.McCarthy4@va.gov.* Please refer to "OMB Control No. 2900–0600" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Reconsideration of Denied Claims.

This request does not include a form. This informal process only requires submission of a written request for reconsideration denial of healthcare benefits.

OMB Control Number: 2900–0600.

Type of Review: Revision of a currently approved collection.

Abstracts: Provisions for this data collection are included in 38 CFR 17.133. This informal process provides for submission of a written request for reconsideration denial of healthcare benefits. The request contains the reason the claimant believes the decision is erroneous and allows submission of new and relevant information. This process reduces both formal appeals and allows decision making to be more responsive to Veterans using the VA healthcare system.

Affected Public: Individuals or households.

Estimated Annual Burden: 50,826 burden hours.

Estimated Average Burden per Respondent: 30 minutes per response.

Frequency of Response: Annually.

Estimated Annual Responses: 101,652 respondents.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14678 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0118]

Proposed Information Collection (Transfer of Scholastic Credit (Schools) (FL–315)) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed for students to transfer course credit from one school to another school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. "2900–0118" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Transfer of Scholastic Credit (Schools)—(FL 22–315).

OMB Control Number: 2900–0118.

Type of Review: Revision of a currently approved collection.

Abstract: VA FL 22–315 is used when a student is receiving Department of Veterans Affairs (VA) education benefits while enrolled at two training institutions at the same time. The institution at which the student pursues his approved program of education must verify that courses pursued at a second or supplemental institution will be accepted as full credit toward the student's course objective.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,769 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 10,614.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14681 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0117]

Proposed Information Collection (VA Form Letter 5–127, Inquiry Concerning Applicant for Employment)

AGENCY: Human Resources Administration, Department of Veterans Affairs.

ACTION: Notice; comment request.

SUMMARY: The Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on VA Form Letter 5–127, which is used by VA personnel officials to verify qualifications and determine suitability of applications for VA employment. This information is obtained from individuals who have knowledge of the applicant's past work record, performance, and character.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Jean Hayes, Human Resources Administration (05), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *jean.hayes@va.gov.* Please refer to "OMB Control No. 2900–0117" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Jean Hayes at (202) 461–7863.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Form Letter 5–127, Inquiry concerning Applicant for Employment.

OMB Control Number: 2900–0117.

Type of Review: Extension of a Currently Approved Collection.

Abstract: The information obtained through use of VA Form Letter 5–127 is used by appointing officials in determining an applicant's suitability and qualifications for employment.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,125 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 12,500.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14682 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0587]

Proposed Information Collection (Brand Name or Equal) Activities Under OMB Review; Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Ricky Clark, Office of Acquisition and Logistics (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *Ricky.Clark@va.gov.* Please refer to "OMB Control No. 2900–0587" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Ricky L. Clark at (202) 632–5400, Fax (202) 343–1434.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

Titles: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–70, Service Data Manual.

OMB Control Number: 2900–0587.

Type of Review: Extension without change of a previously approved collection.

Abstract: VAAR clause 852.211–70 is used when VA purchases technical medical equipment and devices or mechanical equipment. The clause requires the contractor to furnish both operator's manuals and maintenance/repair manuals with the equipment provided to the Government. This clause sets forth those requirements and sets forth the minimum standards those manuals must meet to be acceptable. Generally, this is the same operator's manual furnished with each piece of equipment sold to the general public and the same repair manual used by company technicians in repairing the company's equipment. The cost of the manuals is included in the contract price or listed as separately priced line items on the purchase order. The operator's manual will be used by the individual actually operating the equipment to ensure proper operation and cleaning. The repair manual will be used by VA equipment repair staff to repair the equipment. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 621 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3725.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14684 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0736]

Agency Information Collection (Authorization To Disclose Personal Information to a Third Party) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 22, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to "OMB Control No. 2900–0736" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email, *cynthia.harvey-pryor@va.gov*. Please refer to "OMB Control No. 2900–0736" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Authorization to Disclose Personal Information to a Third Party.

OMB Control Number: 2900–0736.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0845 is used to release information in its custody or control in the following circumstances: where the individual identifies the particular information and consents to its use; for the purpose for which it was collected or a consistent purpose (*i.e.,* a purpose which the individual might have reasonably expected).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 81 FR 54, on March 21, 2016, page 15151.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,667 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 20,000 respondents.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14676 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0589]

Proposed Information Collection (Acquisition Regulation (VAAR) Clause 852.270–3, Purchase of Shellfish) Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Ricky Clark, Office of Acquisition and Logistics (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *Ricky.clark@va.gov*. Please refer to "OMB Control No. 2900–0589" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Ricky L. Clark at (202) 632–5400, Fax (202) 343–1434.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

Titles: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.270–3, Purchase of Shellfish.

OMB Control Number: 2900–0589.

Type of Review: Extension without change of a previously approved collection.

Abstract: VAAR clause 852.270–3 requires that a firm furnishing shellfish to VA must ensure that the shellfish is packaged in a container that is marked with the packer's State certificate number and State abbreviation. In addition, the firm must ensure that the container is tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper. This information normally accompanies the shellfish from the packer and is not information that must be separately obtained by the seller. The information is needed to ensure that shellfish purchased by VA comes from a State- and Federal-approved and inspected source. The information is used to help ensure that VA purchases healthful shellfish. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden: .5 hours.

Estimated Average: Burden per Respondent: 1 minute.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14686 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

Proposed Information Collection (Certificate of Delivery of Advance Payment and Enrollment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0325" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certificate of Delivery of Advance Payment and Enrollment.

OMB Control Number: 2900–0325.

Type of Review: Revision of an approved collection.

Abstract: VA uses information from the current collection at the beginning of the school term to ensure that advance payments have been delivered and to determine whether the student has increased, reduced, or terminated training.

Affected Public: Individuals or households.

Estimated Annual Burden: 122 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1465.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14680 Filed 6–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0593]

Proposed Information Collection (Acquisition Regulation (VAAR) Provision 852.214–70, Caution to Bidder—Bid Envelopes) Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Ricky Clark, Office of Acquisition and Logistics (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email *Ricky.clark@va.gov.* Please refer to "OMB Control No. 2900–0593" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Ricky Clark at (202) 632–5400, Fax (202) 343–1434.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C.

3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

Titles: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.214–70, Caution to Bidder—Bid Envelopes.

OMB Control Number: 2900–0593.

Type of Review: Extension without change of a previously approved collection.

Abstract: VAAR provision 852.214–70, advises bidders that it is their responsibility to ensure that their bid price cannot be ascertained by anyone prior to bid opening. It also advises bidders to identify their bids by showing the invitation number and bid opening date on the outside of the bid envelope. The Government often furnishes a blank bid envelope or a label for use by bidders/offers to identify their bids. The bidder is advised to fill in the required information. This information requested from bidders is needed by the Government to identify bid envelopes from other mail or packages received without having to open the envelopes or packages and possibly exposing bid prices before bid opening. The information will be used to identify which parcels or envelopes are bids and which are other routine mail. The information is also needed to help ensure that bids are delivered to the proper bid opening room on time and prior to bid opening. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 2 hours.

Estimated Average Burden per Respondent: 10 seconds.

Frequency of Response: On occasion.

Estimated Number of Respondents: 640.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–14687 Filed 6–21–16; 8:45 am]

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